

No. 12591

United States  
Court of Appeals

For the Ninth Circuit.

JOHN H. FAHEY, et al.,

Appellants,

vs.

O'MELVENY & MYERS, W. I. GILBERT, JR., and RICH-  
ARD FITZPATRICK,

Appellees.

and

FEDERAL HOME LOAN BANK OF SAN FRANCISCO,  
Appellant,

vs.

O'MELVENY & MYERS, W. I. GILBERT, JR., and RICH-  
ARD FITZPATRICK,

Appellees.

Transcript of Record

In Two Volumes

Volume II

(Pages 397 to 876)

Appeal from the United States District Court,  
Southern District of California,  
Central Division.



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Petitioners' Exhibit No. 2-27-50-2—(Continued)

Memorandum of Points and Authorities

1. It is well established that a trial court has discretion to allow reasonable fees out of corporate funds to counsel employed to resist in good faith the appointment of a receiver or conservator for a corporation.

Ex Parte Fahey (Civil Action No. 5421-PH), writ of mandamus and/or prohibition and/or injunction denied (1947), 91 L. Ed. Adv. Op. 1582 (interim allowance [125] of fees; See *Anderson v. Great Republic Life Insurance Co.* (1940), 41 Cal. App. (2d) 181 (Interim allowance of fees);

even though such resistance ultimately proves unsuccessful.

*Pickrel, Schaeffer & Ebeling v. Merion* (Ohio), App. (1943), 66 N. E. (2d) 273; See *Caminetti v. State Mutual Life Insurance Co.* (1942), 52 Cal. App. (2d) 326, 327; See *Barnes v. Newcomb* (1882), 89 N. Y. 108, 115-116.

2. The reason underlying the allowance of fees in such cases is that since all the funds of the corporation are in the hands of the receiver or conservator, a denial to the corporation of the use of any portion of such funds with which to pay attorneys' fees would in effect deny the company the right to counsel and hence to due process of law.

Ex Parte Fahey (*supra*);

*Anderson v. Great Republic Life Insurance Co.* (*supra*), at p. 193.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

It is submitted that both the principle and the reasoning of these cases are equally applicable to the instant case where all the assets of Los Angeles Bank are in the hands of the purported San Francisco Bank and consequently a denial to Los Angeles Bank of the use of any portion of such assets with which to pay its attorneys would in effect preclude it from [126] testing the validity of the purported Federal Home Loan Bank Administration orders under which it was deprived of all of its assets and properties.

3. In so far as the allowance of counsel fees is concerned, the instant case is analogous to a suit for divorce or separate maintenance wherein it is discretionary with the court to allow interim costs and attorneys' fees to the wife for the prosecution or defense of the litigation even in the absence of a statute authorizing such an allowance.

Madden, *Persons and Domestic Relations* (1931), Sec. 98, pp. 325-326; 17 Am. Jur. 448, 449;

Smiley v. Smiley (1925), 136 Wash. 241; 239 Pac. 551.

4. The stockholders of a corporation are the equitable owners of its assets, and they have a proprietary interest in the corporation.

11 Fletcher Cyc. of Corps. (Rev. and Perm. Ed., 1932), p. 93, and cases cited in footnotes 8 and 9.

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Plaintiff associations, representing themselves and other stockholders of Los Angeles Bank, are seeking an allowance for reasonable attorneys' fees out of properties and assets which equitably belong to them in order to prosecute their suit to recover such properties and assets.

5. See also generally: [127]

Sprague v. Ticonic National Bank (1939),  
307 U. S. 161;

Trustees v. Greenough (1881), 105 U. S. 527;

Winslow v. Harold G. Ferguson Corp. (1944),  
25 Cal. (2d) 274.

Affidavit of Pierce Works and John Whyte in  
Support of Application for Attorneys' Fees

State of California,

County of Los Angeles—ss.

Pierce Works and John Whyte, being first duly sworn, depose and say: That Pierce Works is and at all times herein mentioned was a partner in, and that John Whyte is and at all times herein mentioned was associated with, the law firm of O'Melveny & Myers, 433 South Spring Street, Los Angeles 13, California; that they are, and each of them is, and at all times herein mentioned was, a duly admitted and qualified attorney and counselor at law and practicing as such in and before the above-entitled court; and that the facts herein stated are within the personal knowledge of either or both of said affiants.

## Petitioners' Exhibit No. 2-27-50-2—(Continued)

1. For purposes of brevity, and to avoid [128] repetition, affiants hereby adopt and restate herein by reference each and every allegation set forth in Paragraphs 2, 29, 30, 31, 32, 33 and 34, and each of them, of the complaint on file herein in Civil Action No. 5678-PH (WM).

2. On and prior to March 29, 1946, Los Angeles Bank was carrying on the normal and usual business and functions of a Federal Home Loan Bank at Los Angeles, California, with assets as of said date in excess of \$45,000,000.00. On said date, pursuant to the terms of purported Federal Home Loan Bank Administration Order Nos. 5082, 5083 and 5084, purportedly issued on said date by defendant John H. Fahey, as chairman of the Federal Home Loan Bank Board and purportedly serving as Federal Home Loan Bank Commissioner, said Los Angeles Bank was purportedly liquidated, reorganized and dissolved, all of its assets and properties were then and there seized by said defendant and purportedly transferred to and were physically taken possession of by the Federal Home Loan Bank of Portland (hereinafter sometimes referred to as "Portland Bank"); all liabilities and obligations of said Los Angeles Bank were purportedly assumed by Portland Bank, Portland Bank was ostensibly moved to the City and County of San Francisco, California; the name of said Portland Bank was purportedly changed to that of "Federal Home Loan Bank of San Francisco" (hereinafter

Petitioners' Exhibit No. 2-27-50-2—(Continued) sometimes referred to as “the purported San Francisco Bank”), and ever since said date Portland Bank has been [129] purportedly transacting business in California and elsewhere under the name of “Federal Home Loan Bank of San Francisco” with the commingled assets of Los Angeles Bank and Portland Bank.

3. On or about April 1, 1946, Los Angeles Bank, pursuant to a resolution duly adopted by its Executive Committee at a duly held meeting thereof, employed the firm of O'Melveny & Myers and Paul Fussell, Esq., of said firm, and Richard FitzPatrick, Esq., attorneys-at-law of Los Angeles, California, (a) to consider the purported orders hereinabove mentioned in Paragraph 2, and the actions purportedly taken pursuant thereto by the Federal Home Loan Bank Administration, its officers, attorneys, agents and employees; (b) to consider the rights of Los Angeles Bank, the Board of Directors of said Bank and the members thereof, with respect to said purported orders and actions; (c) to consider the rights of the stockholders of said Bank with respect to said purported orders and actions; (d) to advise what actions, suits or proceedings said parties, or any of them, may, can or should take to protect their respective rights; and (e) to bring such actions, suits or proceedings in state or Federal courts in the State of California, or elsewhere, as said attorneys determine to be proper, and otherwise to assist said parties in the protection of their rights and interests.



## Petitioners' Exhibit No. 2-27-50-2—(Continued)

4. On April 2, 1946, the Board of Directors of Los [130] Angeles Bank at a duly held meeting thereof duly approved, ratified and confirmed the action of the Executive Committee in adopting the resolution hereinabove referred to in Paragraph 3. By resolution duly adopted said Board of Directors further appointed a committee **from** among their number, which said committee was thereby authorized and directed to take any **and all** actions, steps and proceedings which they might deem proper, necessary, expedient or advisable to protect the rights and interests of Los Angeles Bank and of its stockholders and members, and to resist all actions purportedly taken pursuant to purported Order Nos. 5082, 5083 and 5084, respectively, of the Federal Home Loan Bank Administration.

5. Pursuant to said employment hereinabove referred to in Paragraphs 3 and 4, Messrs. O'Melveny & Myers, of which firm Paul Fussell, Esq., is and at all times herein mentioned was a partner, in cooperation with Richard FitzPatrick, Esq., began the necessary preliminary legal work looking toward the commencement of an action for the primary purpose of restoring to Los Angeles Bank the possession of its assets and properties and the financing of such an action by the stockholders of said Bank, the nature of such legal work performed by Messrs. O'Melveny & Myers being more particularly herein-after set forth in Paragraph 9.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

6. On June 12, 13 and 14, 1946, upon complaints of Los Angeles Bank and Long Beach Federal Savings and Loan [131] Association, and pursuant to House Resolution 88, a hearing was held before the Select Committee to Investigate Executive Agencies of the House of Representatives, Seventy-ninth Congress, Second Session, with respect to the purported liquidation, reorganization and dissolution of Los Angeles Bank on March 29, 1946, pursuant to purported Federal Home Loan Bank Administration Order Nos. 5082, 5083 and 5084, and the appointment of a conservator for said Long Beach Federal Savings and Loan Association of May 20, 1946, following which said hearing said Committee published its Tenth Intermediate Report, being House Report No. 2659, recommending, among other things, that defendant John H. Fahey herein in his then capacity as purported Federal Home Loan Bank Commissioner "take all necessary steps to re-establish a Federal Home Loan Bank of Los Angeles and a Federal Home Loan Bank of Portland, and revoke the order or orders by which the assets of these two district banks were intermingled."

7. In or about July and August, 1946, Coast Federal, Standard Federal, First Federal, Central, State and Los Angeles American, and each of them, by appropriate resolutions of their boards of directors, and each of them, employed and retained Messrs. O'Melveny & Myers and Richard Fitz-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Patrick, Esq., attorneys-at-law of Los Angeles, California, (a) to consider purported orders of the Federal Home Loan Bank Administration dated March 29, 1946, numbered 5082, 5083 and [132] 5084, respectively, and any other orders of said Federal Home Loan Bank Administration which they deem pertinent, and any actions taken or purportedly taken pursuant thereto by the Federal Home Loan Bank Administration, its officers, agents, attorneys or employees; (b) to consider the rights of each said association as a stockholder of the Federal Home Loan Bank of Los Angeles with respect to said purported orders and actions; (c) to advise what actions, suits, proceedings or other steps each said association may, can or should take to protect its rights; (d) in behalf of each said association, to institute, defend, intervene in or otherwise appear and participate in such actions, suits or proceedings in the Federal or state courts, either in the State of California, or elsewhere, as said attorneys made determine to be appropriate; and (e) generally to take such action (whether like or unlike the foregoing) as said attorneys may deem appropriate to protect the rights and interests of each said association.

8. On August 22, 1946, Los Angeles Bank, Coast Federal, Standard Federal, First Federal, Central, State and Los Angeles American, suing on behalf of all similarly situated members and stockholders of Los Angeles Bank, by and with the advice and consent of Messrs. O'Melveny & Myers and Richard



Petitioners' Exhibit No. 2-27-50-2—(Continued)

FitzPatrick, Esq., their attorneys, commenced that certain action, now designated upon the files of the above-entitled Court as Civil Action No. 5678-PH (WM), reference to the [133] complaint in said action being hereby made for further particulars as to the nature and purpose thereof. Said action is now pending and undetermined in the above-entitled Court, and ever since the commencement of said action Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., have continued to represent and are still representing plaintiffs, and each of them, in said action and in all proceedings therein and expect to represent plaintiffs, and each of them, until said action is concluded, either by a judgment of the above-entitled Court following a trial thereof on the merits, or by an appeal or appeals from said judgment, or by settlement, or otherwise.

9. The legal services necessarily performed by Messrs. O'Melveny & Myers from and after April 1 and 2, 1946, being the dates of employment of said Messrs. O'Melveny & Myers referred to in Paragraphs 3 and 4 hereof, to and including October 31, 1948, in connection with the prosecution of said Civil Action No. 5678-PH (WM) on behalf of plaintiffs, and each of them, have been as follows:

The number of hours spent in connection with said action on behalf of plaintiffs herein between said dates is 828 hours of attorneys' time and 162½ hours of stenographers' time. Attached hereto, marked Exhibit A and made a part hereof, is a

Petitioners' Exhibit No. 2-27-50-2—(Continued) schedule showing the time spent by each individual attorney, whether such services were rendered in court or in office [134] work, or in both, and the total hours in each of such classifications so spent by each individual. Said schedule also shows whether each of said individuals is a partner in the firm of O'Melveny & Myers or an employee thereof.

As a summary, the total of 828 hours of attorneys' time spent by Messrs. O'Melveny & Myers is made up as follows:

	Court Time	Office Time	Totals
Partners .....	21½	160	162½
Employees .....	3	662½	665½
Totals.....	5½	822½	828

The hours stated above and under Exhibit A are based on daily time sheets kept by attorneys and stenographers in the offices of O'Melveny & Myers.

The general nature of said legal services has been as follows:

March and April, 1946.

Conferences with executive committee and with members of the board of directors of Los Angeles Bank, preparation for and attendance at meetings of executive committee of California Savings and Loan League and stockholders of Los Angeles Bank, examination of Security Owners Protection Act, preparation of application to the Corporation Commissioner, conferences with Mr. FitzPatrick and research in connection with the above-mentioned

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
matters, drafting opinion re right of stockholders of Los Angeles Bank to contribute to Federal [135] Home Loan Bank Stockholders' Committee and research and conferences with Mr. FitzPatrick in connection therewith, attendance at meeting of Federal Home Loan Bank Stockholders' Committee, examination of factual background of proposed suit against John H. Fahey, purportedly serving as Federal Home Loan Bank Commissioner, research re venue of said proposed action, examination of opinion of Washington, D. C., attorneys re said proposed action.

May, 1946.

Attendance at meeting of Federal Home Loan Bank Stockholders' Committee, study of file re proposed suit against purported Federal Home Loan Bank Commissioner, study of Federal Home Loan Bank Act, preparation of outline of complaint, study of rules and regulations of Federal Home Loan Bank System, drafting of complaint, trip by Mr. Whyte to Fresno and attendance at meeting of members of the California Savings and Loan Industry for purpose of explaining proposed lawsuit.

June, 1946.

Conferences with Mr. FitzPatrick, and with attorneys for other litigants, attendance at meetings of Federal Home Loan Bank Stockholders' Committee, research and preparation of memorandum re application of Section 57 of the Judicial Code, 28 U.S.C., Sec. 118.

## Petitioners' Exhibit No. 2-27-50-2—(Continued)

July, 1946.

Conferences with Mr. FitzPatrick, with Mr. Berry, and [136] with attorneys for other litigants, study of transcript of hearing before Committee of House of Representatives to Investigate Acts of Executive Agencies, research re problems incident to preparation of complaint, revision of complaint.

August, 1946.

Revision of complaint, research re service of process, preparation of summons and order for publication thereof, details incident to filing and service of summons and order, including court appearance in connection with the order, conferences with Mr. FitzPatrick.

September, 1946.

Research re possible denial of due process under Section 26 of the Federal Home Loan Bank Act, studying report of Congressional Committee, research and preparation of memorandum re constitutionality of Section 26 of the Federal Home Loan Bank Act, conferences with Mr. FitzPatrick and with Mr. Berry.

October, 1946.

Conferences with Mr. FitzPatrick re constitutionality of Section 26 of the Federal Home Loan Bank Act and other matters, study of defendant Fahey's motion to dismiss complaint, including analysis of his points and authorities.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

November, 1946.

Preparation of memorandum analyzing defendant Fahey's motion to dismiss complaint, research re Los Angeles Bank's opposition to motion to dismiss complaint, study of motions [137] of Portland Bank attacking complaint and reading and briefing of authorities cited in support thereof, research and preparation of memorandum re United States as indispensable party defendant to lawsuit, conferences with Mr. FitzPatrick.

December, 1946.

Reading and abstracting cases cited in support of Portland Bank's motion attacking complaint, trip to Long Beach and conference with attorneys for other litigants, attendance at meetings of Federal Home Loan Bank Stockholders' Committee, conferences with Mr. FitzPatrick.

August, 1947.

Consideration of effect of President Truman's Reorganization Plan 3 upon parties defendant, research and consideration of problems re substitution of parties defendant under Rule 25(d) F.R.C.P., conference with Mr. FitzPatrick and attorneys for other litigants re joining of new defendants, drafting moving papers re substitution of parties defendant, conferences with Mr. FitzPatrick.

September, 1947.

Revision of moving papers re substitution of parties defendant, checking Federal Register for



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
data re membership of Home Loan Bank Board,  
conferences with Mr. FitzPatrick and attorneys for  
other litigants.

October, 1947.

Conferences with Mr. FitzPatrick and attorneys  
for other [138] litigants, revising moving papers re  
substitution of parties defendant, obtaining order  
for service of substitution papers and details inci-  
dent to service.

November, 1947.

Preparing memorandum of points and authorities  
in opposition to motions of defendants Fahey and  
Portland Bank attacking complaint and research in  
connection therewith.

January, 1948.

Conferences with members of the legal depart-  
ment of Title Insurance and Trust Company,  
preparing for argument resisting motions of de-  
fendants Fahey and Portland Bank attacking  
complaint and court appearance re said motion,  
research re definition of indispensable party, con-  
ferences with Messrs. Eason and FitzPatrick, com-  
posing letter to Mr. Eason re status of numerous  
motions to be heard on March 22, 1948.

February, 1948.

Examination of proposed resolution to be adopted  
by Home Loan Bank Board reconstituting Los  
Angeles Bank and conferences with Mr. FitzPatrick  
and with certain members of the Federal Home

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Loan Bank Stockholders' Committee concerning the  
same.

March, 1948.

Conferences with Mr. FitzPatrick and attorneys  
for other litigants, conferences with member of  
legal department of Title Insurance and Trust  
Company. [139]

May, 1948.

Conference with Irving Bishop, examination of  
answer of the proposed San Francisco Bank and  
research thereon, gathering information necessary  
for substitution of new defendants and preparation  
of moving papers therefor, research re possibility  
of enjoining the purported San Francisco Bank  
from spending Los Angeles Bank's funds, confer-  
ences with Mr. FitzPatrick.

June, 1948.

Research re possibility of enjoining the proposed  
San Francisco Bank from spending Los Angeles  
Bank's funds, conferences re substitution papers,  
attendance at meeting of Federal Home Loan Bank  
Stockholders' Committee, revision of letter to direc-  
tors of the purported San Francisco Bank, confer-  
ences with Mr. FitzPatrick.

July, 1948.

Conferences with Mr. FitzPatrick re San Fran-  
cisco suit of ten Bay Area savings and loan asso-  
ciations.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

August, 1948.

Conferences with certain members of the Federal Home Loan Bank Stockholders' Committee.

September, 1948.

Conferences with Mr. FitzPatrick, studying draft of resolution for re-establishment of Los Angeles Bank prepared by Mr. McKenna. [140]

October, 1948.

Conferences with Mr. FitzPatrick, with attorneys for other litigants, and with certain members of the Federal Home Loan Bank Stockholders' Committee re proposed hearing in Washington, D. C., to consider reestablishment of Los Angeles Bank.

During each of the above-mentioned months there were conferences among various partners and employees of the law firm of O'Melveny & Myers with respect to the matters set forth above. Furthermore, no attempt has been made to itemize the voluminous correspondence and numerous telephone calls regarding such matters which took place over the above-mentioned period.

The legal services necessarily performed by Messrs. O'Melveny & Myers from and after October 31, 1948, to and including the date of filing hereof, have not as yet been calculated.

10. In addition it is contemplated that Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., will necessarily be required to perform additional legal services in connection with the future conduct



Petitioners' Exhibit No. 2-27-50-2—(Continued) of Civil Action No. 5678-PH (WM) on behalf of plaintiffs, and each of them. Said contemplated future services will consist in general of preparation for trial, including the taking of depositions of certain officials of the Federal Home Loan Bank Administration [141] on and prior to March 29, 1946, and others, some or all of said depositions to be taken in parts of the United States other than California, the assembling of voluminous factual and documentary material to support the allegations of the complaint, the interviewing of numerous witnesses to be called on behalf of plaintiffs, research of questions of law, and the preparation of a trial brief covering both the facts expected to be proved and the law applicable thereto; the trial itself which may last as long as three or four months; the preparation of findings, judgments or orders of the above-entitled Court following said trial; the taking or resisting of appeals from said judgments or orders; etc.

11. On or about May 20, 1946, John H. Fahey, as Chairman of the Federal Home Loan Bank Board and purportedly serving as Federal Home Loan Bank Commissioner, purportedly appointed A. V. Ammann as purported conservator for the Long Beach Federal Savings and Loan Association (hereinafter sometimes referred to as "Long Beach Association"), and said A. V. Ammann and his deputies did then and there take immediate possession and control of said association, including all of its assets aggregating in excess of \$26,000,000.00.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

12. Thereafter, on May 27, 1946, Paul Mallonee, C. H. Newhouse and Winnie Bucklin, individually, and as representatives of a class, suing for and on behalf of all of the shareholder members of Long Beach Association, commenced an action [142] in the above Court, now designated upon the files of said Court as Civil Action No. 5421-PH, against John H. Fahey, individually, John H. Fahey, as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, A. V. Ammann, as purported conservator for Long Beach Association, Long Beach Association, an association organized and existing under and by virtue of the laws of the United States, and numerous Does, seeking, among other things, to oust the conservator and to restore possession of the property and assets of said association to its officers and directors.

13. On July 1, 1946, Los Angeles Bank became a third-party defendant in said action by the filing as against it and others of the third-party complaint of defendant Long Beach Association. On August 26, 1946, Los Angeles Bank became a cross-claimant in said action by the filing of its cross-claim against Federal Home Loan Bank of Portland, sometimes known and referred to as Federal Home Loan Bank of San Francisco, a body corporate, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board and purportedly serving as Federal Home Loan Bank Commissioner, which said cross-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
claim sought to obtain a judgment similar to that sought by the complaint in Civil Action No. 5678-PH (WM). On December 9, 1947, Los Angeles Bank became a defendant in said action by the filing as against it and others of the first amended and supplemental complaint of [143] plaintiffs hereinabove named in Paragraph 12. On May 28, 1948, Los Angeles Bank became a cross-defendant in said action by the filing as against it and others of the supplemental cross-claim to amended cross-claim of defendant and third-party plaintiff Long Beach Association.

14. On November 7, 1947, the above-entitled Court made and entered an order consolidating Civil Action No. 5678-PH (WM) with Civil Action No. 5421-PH.

15. The legal services necessarily performed by Messrs. O'Melveny & Myers from and after April 1 and 2, 1946, being the dates of employment of said Messrs. O'Melveny & Myers referred to in Paragraphs 3 and 4 hereof, to and including October 31, 1948, in representing Los Angeles Bank in its varying capacities or potential capacities as a defendant, third-party defendant, cross-claimant or cross-defendant in Civil Action No. 5421-PH, have been as follows:

The number of hours spent on behalf of Los Angeles Bank in said action between said dates is 806 hours of attorneys' time and 242½ hours of stenographers' time. Attached hereto, marked Ex-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
 hibit B and made a part hereof, is a schedule showing the time spent by each individual attorney in connection with said action, whether such services were rendered in court or in office work or in both, and the total hours in each of such classifications so spent by each individual. Such schedule also shows whether each of said individuals is a [144] partner in the firm of O'Melveny & Myers or an employee thereof.

As a summary, the total of 806 hours of attorneys' time spent by Messrs. O'Melveny & Myers is made up as follows:

	Court Time	Office Time	Totals
Partners .....	8	149	157
Employees .....	67½	581½	649
Totals.....	75½	730½	806

The hours stated above and under Exhibit B are based on daily time sheets kept by attorneys and stenographers in the office of Messrs. O'Melveny & Myers.

The general nature of said legal services has been as follows:

July, 1946.

Study of third-party complaint filed against Los Angeles Bank and conferences with attorneys for other litigants in connection therewith, study of complaint of shareholders of Long Beach Association, conferences with Mr. FitzPatrick and with Mr. Berry regarding these matters, attendance before three-judge statutory court re argument over



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
constitutionality of Section 5 of the Home Owners  
Loan Act.

September, 1946.

Study of decision of three-judge statutory court,  
conferences with Messrs. FitzPatrick and Berry re  
form of said court's decree and study of de-  
cree. [145]

October, 1946.

Research in connection with decision and decree  
of three-judge statutory court.

December, 1946.

Consideration of questions to be decided by  
United States Supreme Court on appeal from de-  
cision of three-judge statutory court, study of  
third-party complaint of Long Beach Association  
and cross-claim of Los Angeles Bank and research  
re whether trial court would retain jurisdiction  
over said pleadings if the main action should fall,  
attendance at meeting of Federal Home Loan Bank  
Stockholders' Committee, obtaining copies of and  
studying points and authorities theretofore filed  
by all parties to the action and conference with  
attorneys for other litigants in connection there-  
with, studying transcript of hearing before three-  
judge statutory court.

January, 1947.

Preparation of memorandum re issues raised by  
points and authorities theretofore filed by all par-  
ties to the action.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

April, 1947.

Revision of file and research re right of Los Angeles Bank to file brief in United States Supreme Court, conferences with Mr. FitzPatrick and with attorneys for other litigants, preparation of memorandum re points to be covered in brief of Los Angeles Bank to be filed in United States Supreme Court, preparation of appellate brief of Los Angeles Bank, including [146] research re constitutionality of Section 5(d) of the Home Owners Loan Act and estoppel to challenge the same, exhaustion of administrative remedies, effect of failure to obtain personal jurisdiction over defendant Fahey and other complicated legal questions.

June, 1947.

Studying opinion of United States Supreme Court and conferences with Messrs. Daugherty and Bishop re effect thereof.

July, 1947.

Conference with Mr. FitzPatrick and attorneys for other litigants.

September, 1947.

Conference with Mr. FitzPatrick and attorneys for other litigants, court appearances, research re manner of substituting parties cross-defendant.

October, 1947.

Drafting plan for reestablishment of Los Angeles Bank and conferences with Mr. FitzPatrick

Petitioners' Exhibit No. 2-27-50-2—(Continued)

re same, studying proposed answer of Los Angeles Bank to complaints in intervention, conference with Mr. FitzPatrick and other litigants re proposed interpleader, attendance at meeting of Federal Home Long Bank Stockholders' Committee and conferences with certain members thereof, examination of the plan for restoration of Long Beach Association to its officers and directors, consideration of question of whether Los Angeles Bank should [147] answer complaints in intervention and examination of said complaints, preparing moving papers re substitution of parties cross-defendant and conferences thereon, study of problems raised by motion of the proposed San Francisco Bank to vacate order permitting third-party complaint of Long Beach Association and cross-claim of Los Angeles Bank, preparation of points and authorities in opposition to said motion.

November, 1947.

Preparation for argument re motion to substitute parties cross-defendant and in opposition to motion to vacate order permitting filing of third-party complaint, in court re hearing of these and other motions attacking pleadings of Long Beach Association and other parties on its side of the litigation, study of transcript covering Judge Hall's ruling on said motions, conferences with Mr. FitzPatrick and with Mr. Eason.

December, 1947.

Examination of plaintiff's amended and supplemental complaint and drafting of answer thereto.

## Petitioners' Exhibit No. 2-27-50-2—(Continued)

January, 1948.

Conference with members of legal department of Title Insurance and Trust Company, examination of answer of Long Beach Association to amended and supplemental complaint, conference with attorneys for other litigants, with Mr. FitzPatrick and with Mr. Eason, examination of orders returning Long Beach [148] Association to its officers and directors.

February, 1948.

Conference with members of the legal department of Title Insurance and Trust Company, conference with attorneys for other litigants re motion of Long Beach Association to compel statement of claims against it and study of moving papers, attendance at meeting of Federal Home Loan Bank Stockholders' Committee, conferences with Mr. FitzPatrick and with attorneys for other litigants, preparation of return to order to show cause re motion of Long Beach Association to compel setting forth of claims against it.

March, 1948.

Details incident to filing above mentioned return to order to show cause, conferences with Mr. FitzPatrick, in court re hearing of above mentioned order to show cause, study of proposed order requiring deposit in court of collateral held by the purported San Francisco Bank and conferences re correction of same, revision of proposed plan for



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
reconstitution of Los Angeles Bank and conferences  
re motion and order for the return of excess col-  
lateral held by the purported San Francisco Bank  
to Long Beach Association, attendance at meeting  
of Federal Home Loan Bank Stockholders' Com-  
mittee.

May, 1948.

Preparation of moving papers for substitution  
of new parties cross-defendant, conference with  
certain members of [149] Federal Home Loan Bank  
Stockholders' Committee, conference with Mr. Fitz-  
Patrick concerning form of ballot for proposed  
vote of stockholders in favor of reconstituting Los  
Angeles Bank.

June, 1948.

Conferences re above mentioned substitution  
papers, study of supplemental cross-claim of Long  
Beach Association, attending meeting of Federal  
Home Loan Bank Stockholders' Committee, re-  
search re potential liability of directors of Los  
Angeles Bank should they authorize a compromise  
of this litigation, conferences with Mr. FitzPatrick  
re said potential liability.

July, 1948.

Research re potential liability of directors of Los  
Angeles Bank should they authorize a compromise  
of this litigation and conferences with Mr. Fitz-  
Patrick thereon, study or draft of order to show  
cause and motion of Long Beach Association for

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
dissolution of the purported San Francisco Bank and reestablishment of Los Angeles Bank and conferences with attorneys for other litigants thereon, trip to Fresno and court appearance re motion for substitution of parties cross-defendant and other motions, conference re above mentioned order to show cause, study of supplemental cross-claim of Long Beach Association and drafting answer thereto, drafting proposed stipulated judgment for settlement of litigation and [150] conferences with Mr. FitzPatrick thereon, attendance at meeting of Federal Home Loan Bank Stockholders' Committee, examination of petition for restraining order enjoining San Francisco suit of ten Bay Area savings and loan associations, court appearance re restraining San Francisco suit.

August, 1948.

Conference with Messrs. McKenna and FitzPatrick re proposed stipulated judgment, examination of publicity of the above-mentioned ten Bay Area savings and loan associations, conference in San Francisco with Messrs. FitzPatrick, Dusenbery, McKenna and Barnett re proposed stipulated judgment, study of recent pleadings filed in this litigation, drafting memorandum re cost of proposed settlement, study of order to show cause and motion of Long Beach Association for dissolution of the proposed San Francisco Bank and for reestablishment of Los Angeles Bank and preparation of return to said order to show cause, attendance at

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
meeting of Federal Home Loan Bank Stockholders' Committee, conference with certain members of said committee, study of order to show cause and motion of Long Beach Association to restrain Sun Valley meeting of stockholders of the purported San Francisco Bank and conference with Mr. FitzPatrick thereon, in court re hearing on said order to show cause and motion.

October, 1948.

Conference with Mr. FitzPatrick re proposed hearing in [151] Washington, D. C., to consider reestablishment of Los Angeles Bank, in court re hearing on motion of Long Beach Association, joined in by Los Angeles Bank, for inspection of documents, and conference with Messrs. Holmes, Burns, et al., re settlement of litigation.

During each of the above-mentioned months there were conferences among various partners and employees of the law firm of O'Melveny & Myers with respect to the matters set forth above. Furthermore, no attempt has been made to itemize the voluminous correspondence and numerous telephone calls regarding such matters which took place over the above-mentioned period.

The legal services necessarily performed by Messrs. O'Melveny & Myers from and after October 31, 1948, to and including the date of filing hereof have not as yet been calculated.

16. The legal services necessarily performed by Messrs. O'Melveny & Myers from and after April 1

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
dissolution of the purported San Francisco Bank and reestablishment of Los Angeles Bank and conferences with attorneys for other litigants thereon, trip to Fresno and court appearance re motion for substitution of parties cross-defendant and other motions, conference re above mentioned order to show cause, study of supplemental cross-claim of Long Beach Association and drafting answer thereto, drafting proposed stipulated judgment for settlement of litigation and [150] conferences with Mr. FitzPatrick thereon, attendance at meeting of Federal Home Loan Bank Stockholders' Committee, examination of petition for restraining order enjoining San Francisco suit of ten Bay Area savings and loan associations, court appearance re restraining San Francisco suit.

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Petitioners' Exhibit No. 2-27-50-2—(Continued)  
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16. The legal services necessarily performed by Messrs. O'Melveny & Myers from and after April 1

Petitioners' Exhibit No. 2-27-50-2—(Continued) and 2, 1946, to and including October 31, 1948, in both of the above-mentioned consolidated civil actions have required a combined total of 1634 hours of attorneys' time and 405 hours of stenographers' time, said attorneys' time being made up as follows:

	Court Time	Office Time	Totals
Partners .....	101½	309	319½
Employees .....	70½	1244	1314½
Totals.....	81	1553	1634

17. In addition, it is contemplated that Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., will necessarily be required to perform additional legal services in connection with the future conduct of Civil Action No. 5421-PH on behalf of defendant, third-party defendant, cross-claimant, and cross-defendant Los Angeles Bank. Said contemplated future services will consist in general of resisting the multi-million dollar damage claims set forth in the supplemental cross-claim to amended cross-claim of defendant and third-party plaintiff Long Beach Association, filed in said action on May 28, 1948, as against Los Angeles Bank and numerous other cross-defendants. Said resistance will require not only preparation for trial but the trial itself may last for several months, following which it may be necessary to take or resist an appeal from the judgment of the above-entitled Court entered upon said supplemental cross-claim.

18. Affiants, and each of them, respectfully state that each and all of the claims and defenses asserted

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
by Los Angeles Bank as a party to the above-entitled consolidated actions are meritorious and are made in good faith. In this connection affiants, and each of them, state that at the forthcoming trial of said consolidated actions they expect to prove, among other things, each and all of the facts heretofore presented to the hereinabove-mentioned Select Committee to Investigate Executive Agencies of the House of [153] Representatives, Seventy-ninth Congress, Second Session, as to which said Committee recommended, among other things, as follows:

“(1) That the Commissioner revoke the order reducing the number of districts from 12 to 11 in the Federal Home Loan Bank System.

“(2) That the Commissioner take all necessary steps to re-establish a Federal Home Loan Bank of Los Angeles and a Federal Home Loan Bank of Portland, and revoke the order or orders by which the assets of these two district banks were intermingled.

“\* \* \*

“(5) That the appropriate committees of Congress give consideration to the necessity (if, in the opinion of such committees, the necessity exists) of amending the Federal Home Loan Act in the following particulars:

“(a) Clarifying the authority of the Board in the matter of approval of elective officers of the regional banks to the end that neither the Board

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
nor other officials may exercise such authority arbitrarily.

“(b) Clarifying the authority of the Board or the Administrator to increase or decrease the number of regional banks, and specifying the [154] condition and procedure under which such changes may be made.”

In this connection affiants further state that Long Beach Association has already been returned to the management of its own officers and directors, and that defendant John H. Fahey has heretofore been removed as purported Federal Home Loan Bank Commissioner.

19. No attorneys' fees have been heretofore paid or allowed to Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., or either of them, on account of their legal services rendered in Civil Action No. 5678-PH (WM) and Civil Action No. 5421-PH, except as follows: On or about July 31, 1946, the Federal Home Loan Bank Stockholders' Committee paid the sum of \$2,500.00 on account to Richard FitzPatrick, Esq.; on or about October 15, 1946, said committee paid the sum of \$2,500.00 on account to Messrs. O'Melveny & Myers; on or about February 18, 1948, said committee paid the sum of \$2,500.00 on account to Richard FitzPatrick, Esq.; and on or about February 17, 1948, said committee paid the sum of \$2,500.00 on account to Messrs. O'Melveny & Myers.

Wherefore, your affiants, and each of them, pray



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
that the above-entitled Court make and enter the  
order specified on pages 2 to 3 of the notice of  
motion to which this affidavit is attached.

/s/ PIERCE WORKS, [155]

/s/ JOHN WHYTE.

Subscribed and sworn to before me this 5th day  
of January, 1949.

/s/ AGNES E. SHULTZ,  
Notary Public in and for Said County and  
State. [156]

#### Exhibit A

#### Schedule of Hours by Individual Attorneys Spent in Connection With Civil Action No. 5678-PH (WM)

Partners	Court	Office	Total
Paul Fussell .....		70	70
Pierce Works .....		761½	761½
Jackson W. Chance .....	2½	4½	7
Sidney H. Wall .....		7½	7½
W. B. Carman .....		1½	1½
Employees			
John Whyte .....	3	473	476
Roy B. Woolsey .....		331½	331½
Howard J. Deards .....		39	39
Leo Deegan .....		4	4
Borgny Baird .....		35	35
James Dunlap .....		22	22
Frank T. Hamilton .....		5	5
Robert Cahall .....		1	1
*Frank Forve .....		40	40
Clinton Clad .....		10	10
Totals.....	5½	822½	828

\* Law school graduate—not then admitted to practice—research  
work only.

## Petitioners' Exhibit No. 2-27-50-2—(Continued)

## Exhibit B

Schedule of Hours by Individual Attorneys Spent in  
Connection With Civil Action No. 5421-PH

Partners	Court	Office	Total
Paul Fussell .....	3	104½	107½
Jackson W. Chance .....		13	13
Pierce Works .....	5	29	34
Homer I. Mitchell .....		2½	2½
Employees			
John Whyte .....	67½	375½	443
Howard J. Deards .....		92½	92½
Roy B. Woolsey .....		17½	17½
*Edward Rauscher .....		96	96
Totals.....	75½	730½	806

Affidavit of Richard FitzPatrick in Support of  
Application for Attorneys' Fees

State of California,  
County of Los Angeles—ss.

Richard FitzPatrick, being first duly sworn says:

He is now and at all times herein mentioned, has been an attorney-at-law, duly admitted and licensed to practice since December, 1917, in all the courts of the State of California, in the United States Circuit Court of Appeals for the Ninth Circuit, in the District Court of the United States in and for the Southern District of California, Central Division, and since December, 1943, in the Supreme Court of the United States.

On or about the 1st day of April, 1946, he was employed by the Federal Home Loan Bank of Los

\* Law school graduate—not then admitted to practice—research work only.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

Angeles, the plaintiff and cross-defendant above named, to consider Orders Nos. 5082, 5083 and 5084 of the Federal Home Loan Bank Administration dated March 29, 1946, and the actions taken pursuant thereto by the Federal Home Loan Bank Administration, its officers, attorneys, agents and employees; to consider the rights of the Federal Home Loan Bank of Los Angeles, the board of directors of said bank and the members thereof, with respect to said orders and actions; to consider the rights of the stockholders [159] of said bank with respect to said orders and actions; to advise what actions, suits or proceedings said parties, or any of them, might, could or should take to protect their respective rights, and to bring such actions, suits or proceedings in the state or Federal courts in the state of California, or elsewhere as might be determined to be proper, and otherwise to assist said parties in the protection of their rights and interest.

Affiant accepted said employment, and has ever since on or about the 1st day of April, 1946, been engaged in the discharge of duties and obligations, assumed by him in accepting such employment, as hereinafter shown.

On March 29, 1946, at about 1:00 o'clock p.m., C. E. Berry, Vice President of the Federal Home Loan Bank of Los Angeles, telephoned affiant that certain persons representing the Federal Home Loan Bank Administration had appeared at the office of the bank at about 12:00 o'clock noon of

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
that day, and had presented to him certified copies of Federal Home Loan Bank Administration Orders Nos. 5082, 5083 and 5084 and had demanded that he deliver to them possession of the offices of the bank and its assets. He read to affiant on the telephone said Orders Nos. 5082, 5083 and 5084, and requested that affiant telephone T. A. Gregory, Eugene Webb, Jr., F. B. Palmer, and C. A. Carden, directors of the bank who resided in Los Angeles County, and ask them to attend a conference [160] to be held in affiant's office at 3:00 p.m. of that day to consider said orders and the seizure of said bank.

Affiant telephoned said directors as requested, and at about 3:00 p.m. said directors together with C. E. Berry met at affiant's office, and there conferred with him concerning the seizure of the Federal Home Loan Bank of Los Angeles. It was then and there decided that a conference should be sought with Paul Fussell, Esq., of the law firm of O'Melveny & Myers, to confer with him concerning such seizure. All of the persons named, including affiant, then went to the office of Mr. Fussell, and conferred with him and his partner, Pierce Works, Esq., concerning the seizure of the Federal Home Loan Bank of Los Angeles.

Said directors of the Federal Home Loan Bank of Los Angeles and C. E. Berry, its vice president, then and there, on behalf of said Federal Home Loan Bank of Los Angeles, employed affiant, the firm of O'Melveny & Myers, and Paul Fussell, Esq., of that firm, to advise them as to what action,

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
if any, said directors and C. E. Berry should take to protect the rights and interests of said bank, its directors and its stockholder members.

At said conference a statement of the matters preceding and leading to the issuance of said orders and the seizure of said bank was made to Mr. Fussell, Mr. Works and affiant, by said directors and C. E. Berry, and copies of said orders [161] were presented to them. Said statements, said orders and the provisions of the Federal Home Loan Bank Act governing the creation and operation of the twelve banks constituting the Federal Home Loan Bank System were considered by Mr. Fussell, Mr. Works and affiant, and they expressed the opinion that said orders and the seizure of said bank were unlawful and void, and that in their judgment such seizure should be resisted.

They also advised that a special meeting of the executive committee of said bank should be held as soon as possible to consider the orders of the Federal Home Loan Bank Administration and the seizure of the bank and to take such action with reference thereto, as said committeemen should deem appropriate.

At said conference Messrs. Fussell and Works and affiant advised that a special meeting of the board of directors of the Federal Home Loan Bank of Los Angeles should also be held for the purpose of considering and acting upon the purported orders of the Federal Home Loan Bank Administration.

After examination of a copy of the by-laws of



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
said bank by Messrs. Fussell, Works and affiant, and in accordance therewith, a call and notice of such a meeting to be held on April 2, 1946, was prepared by Paul Fussell, Esq., and affiant, and was signed by the four directors of said bank above named, and was sent on March 29, 1946, by prepaid telegram, to each [162] member of the board of directors who had not signed said call and notice, and a copy thereof was personally delivered, on March 29, 1946, to each of said directors who had signed the same.

On March 30, 1946, affiant prepared a form of consent to hold and waiver of notice of a special meeting of the executive committee of the Federal Home Loan Board of Los Angeles to be held on April 1, 1946. Signatures thereto of all of the members of that committee were obtained.

Affiant was engaged the entire days of March 30 and 31, 1946, with innumerable telephone calls and conferences, all pertaining to said seizure of the Federal Home Loan Bank of Los Angeles.

At said meeting said committee adopted resolutions ratifying, approving and confirming the action of said directors, Carden, Gregory, Webb and Palmer, in consulting and employing affiant and the firm of O'Melveny & Myers, and Paul Fussell, Esq., of said firm, on behalf of the Federal Home Loan Bank of Los Angeles, (1) to consider said orders and the actions taken pursuant thereto by the Federal Home Loan Bank Administration, its officers, attorneys, agents and employees; (2) to consider

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
the rights of the Federal Home Loan Bank of Los Angeles, the board of directors of said bank and the members thereof, with respect to said orders and actions; (3) to consider the rights of the stockholders of said bank with respect [163] to said orders and actions; (4) to advise what actions, suits or proceedings said parties or any of them, may, can or should take to protect their respective rights, and (5) to bring such actions, suits and proceedings in the state or Federal courts in the state of California or elsewhere, as said lawyers determine to be proper, and otherwise to assist said parties in the protection of their rights and interests.

Further resolutions were adopted at said meeting of said executive committee that the seizure of said bank by the Federal Home Loan Bank Administration be called to the attention of the trade organizations of the savings and loan industry and of the members of the Federal Home Loan Bank System throughout the United States, and to the attention of the Senators and Members of Congress of the United States with the request that a congressional investigation be made of the acts of the Federal Home Loan Bank Administration, and of the Federal Home Loan Bank Commissioner in issuing said orders and in seizing the Federal Home Loan Bank of Los Angeles.

Affiant was engaged the entire day of April 1, 1946, in attending said meeting of the executive committee of the Federal Home Loan Bank of Los Angeles, in many conferences with the members of that

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
committee, with C. E. Berry, vice president of said Federal Home Loan Bank of Los Angeles and with Paul Fussell, Esq., and in many telephone conferences, all pertaining to the seizure of said bank. Affiant also prepared [164] minutes of said executive meeting held on April 1, 1946.

Affiant was likewise engaged the entire day of April 2, 1946, in attending the special meeting of the board of directors of the Federal Home Loan Bank of Los Angeles held on that day, in conferences with the directors of said bank, with the directors of the California Savings and Loan League, and with Paul Fussell, Esq., and in attending the meeting of stockholders of the Federal Home Loan Bank of Los Angeles hereinafter mentioned.

At said special meeting of the board of directors of the Federal Home Loan Bank of Los Angeles resolutions were adopted ratifying, confirming and approving all actions of the executive committee taken at the special meeting thereof held on April 1, 1946.

Affiant, with Paul Fussell, Esq., attended a meeting of stockholders of the Federal Home Loan Bank of Los Angeles held in Los Angeles, California, on April 2, 1946. At said meeting of stockholders, a committee of the stockholders of said bank was appointed to consider and act upon all matters growing out of the seizure of said bank. The committee met immediately following the adjournment of the meeting of stockholders and or-

Petitioners' Exhibit No. 2-27-50-2—(Continued)

ganized by the election of officers, and then adjourned to convene the following day.

Affiant attended the adjourned meeting of the committee [165] of stockholders of the Federal Home Loan Bank of Los Angeles. At said meeting a resolution was adopted that the committee retain affiant and the law firm of O'Melveny & Myers and Paul Fussell, Esq., of that firm, and said committee requested that said attorneys render opinions as to the legality of federal and state chartered savings and loan associations, which are stockholders of the Federal Home Loan Bank of Los Angeles, contributing funds to the committee to defray its expenses, and as to how stockholders of the Federal Home Loan Bank of Los Angeles might reserve their rights to object to the validity of the actions of the Federal Home Loan Bank Commissioner in seizing said bank, if such stockholders had business dealings with the Federal Home Loan Bank of San Francisco.

In April, 1946, affiant prepared minutes of the special meeting of the board of directors of the Federal Home Loan Bank of Los Angeles held on April 2, 1946, and had many telephone conferences with C. E. Berry, Paul Fussell, Esq., and with officers of stockholder members of the Federal Home Loan Bank of Los Angeles.

In the early part of April, 1946, affiant was engaged in day-long conferences with C. E. Berry and T. A. Gregory, the latter being one of the members of the Stockholders' Committee, and in innumer-



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
able telephone conversations with members of that committee, all relating to the seizure of said Federal Home Loan Bank of Los Angeles. Affiant also conferred [166] continually with his associate, Paul Fussell, Esq., and with C. E. Berry, and members of the Stockholders' Committee. Among the matters considered in such conference was whether the Stockholders' Committee must obtain a license from the California Corporation Commissioner to act as a security owners' protective committee as provided in statutes of the State of California. It was determined that the Stockholders' Committee should seek a license as required by said act. Affiant assisted Paul Fussell, Esq., in the preparation of said application which was thereafter filed with the Corporation Commissioner. Said application was thereafter granted and said committee duly licensed.

Thereafter between the dates of April 11, 1946, to April 22, 1946, nearly all of affiant's time was engaged in matters relating to the seizure of said bank; in conferences with members of the Stockholders' Committee, with C. E. Berry, Paul Fussell, Esq., and many others. Among many other things, he was engaged in assisting Mr. Fussell in the preparation of an opinion as to the legality of stockholders of the Federal Home Loan Bank of Los Angeles contributing funds to the Stockholders' Committee to defray its expenses, and in the preparation of a form of protest of the seizure of said bank and a reservation of rights if stockholders of the Federal Home Loan Bank of Los Angeles had



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
business dealings with the Federal Home Loan Bank of San Francisco to be signed by [167] stockholders of the Federal Home Loan Bank of Los Angeles.

Affiant was also engaged in the preparation of a lengthy report by the Stockholders' Committee of the seizure of said bank and of the actions taken and proposed to be taken by said committee with reference thereto to be sent to the stockholders of said bank and other interested persons.

In the latter part of April, 1946, affiant spent almost the entire day in attendance upon a meeting of the Stockholders' Committee. At said meeting there was presented to the committee the opinion prepared by Mr. Fussell and affiant holding that both Federal and State savings and loan associations might lawfully pay contributions to said Stockholders' Committee for the purpose of providing funds to defray the cost of the committee's activities. The committee distributed copies of said opinion to all stockholders of the Federal Home Loan Bank of Los Angeles.

There was also presented to the committee a letter of advice, prepared by Mr. Fussell and affiant, with regard to stockholders of said bank protesting said Orders Numbers 5082, 5083 and 5084, and reserving their rights, notwithstanding any transactions they might have with the Federal Home Loan Bank of San Francisco, and enclosing a suggested form of such protest and reservation of rights. Said letter

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
and form were sent to all stockholders of the Federal Home Loan Bank of Los Angeles. [168]

The committee also considered the report, prepared by affiant, of the seizure of the bank and of the actions taken and proposed to be taken by the Stockholders' Committee. This report was sent to all stockholders of said bank, to all savings and loan associations throughout the United States, to all Federal Home Loan Banks, to the Federal Home Loan Bank Commissioner, to all State savings and loan leagues, to the President of the United States, to all Senators and Congressmen and to all National Housing Authority officials.

The committee also directed that affiant and certain members of the committee attend a meeting of the Bay Cities Savings and Loan League, to be held in San Francisco, for the purpose of hearing from representatives of the committee and of the Federal Home Loan Bank Administration as to the seizure of the Federal Home Loan Bank of Los Angeles.

During the last part of April, 1946, affiant devoted at least one-half of his time to conferences, telephone calls and other matters pertaining to the seizure of the Federal Home Loan Bank of Los Angeles. Affiant went by plane to San Francisco to attend a conference of members of the Stockholders' Committee held in that city, and to attend the meeting of the Bay Cities Savings and Loan League held in that city at which the seizure of the Federal Home Loan Bank of Los Angeles was con-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
sidered, returning by plane to Los Angeles. [169]

From March 29, 1946, to April 30, 1946, both dates inclusive, affiant spent a total of 141 hours on the above-indicated work.

During the month of May, 1946, affiant had innumerable conferences with association counsel, with C. E. Berry, with members of the Stockholders' Committee and others; in attendance at meetings of the Stockholders' Committee; in assisting associate counsel in the drafting of a complaint to be filed in an action to be brought by the Federal Home Loan Bank of Los Angeles seeking to recover its assets; and in traveling to Washington, D. C., to prepare for a Congressional investigation of the seizure of the Federal Home Loan Bank of Los Angeles, scheduled to be made by the House of Representatives' Select Committee to Investigate Executive Agencies commencing June 12, 1946.

Affiant, with Paul Fussell, Esq., attended a meeting of said Stockholders' Committee, in May, 1946, at which meeting they reported on the research of questions of law involved in the proposed suit and on the drafting of a complaint to be filed against the Federal Home Loan Bank of San Francisco, et al.

Affiant attended, with John Whyte, Esq., of the firm of O'Melveny & Myers, meetings of the Stockholders' Committee, and of officers of certain stockholders of the bank, held in Fresno, California, on May 19 and May 20. [170]

On May 20, 1946, the Federal Home Loan Bank

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Commissioner seized the Long Beach Federal Savings and Loan Association.

Affiant attended a meeting of said Stockholders' Committee held in Los Angeles in the latter part of May, at which meeting reports were made of the seizure of the Long Beach Federal Savings and Loan Association on May 20, 1946, and of the Congressional investigation, scheduled to be held in Washington, D. C., of the seizure of the Federal Home Loan Bank of Los Angeles, which investigation was to be expanded to cover the seizure of the Long Beach Association.

Affiant was instructed at said meeting to go to Washington, D. C., with J. Howard Edgerton, one of the members of the Stockholders' Committee, and there to employ counsel to assist affiant in preparing to present, and in presenting, the facts concerning the seizures of the Federal Home Loan Bank of Los Angeles and of the Long Beach Association to the Congressional Committee investigating them.

Affiant went by plane to Washington, D. C., where, with J. Howard Edgerton, affiant employed, on behalf of the Stockholders' Committee of Federal Home Loan Bank of Los Angeles, the law firm of Douglas, Obear and Campbell to assist affiant in preparing to present and in presenting all of the facts concerning the seizure of the Federal Home Loan Bank of Los Angeles to said Congressional Committee.

The total time spent by affiant during the month



Petitioners' Exhibit No. 2-27-50-2—(Continued) of May, [171] 1946, in the work above outlined, amounted to 153.3 hours. Of this time, over six days were spent away from Los Angeles where affiant's office is located.

During the first half of June, 1946, affiant was in Washington, D. C., or New York City, preparing for said Congressional investigation, including the preparation of statements of witnesses to be produced by the Federal Home Loan Bank of Los Angeles as to the seizure of said bank, and in attending upon the hearing held by said Congressional Committee.

Reference is made to the record of said hearing and the report of the Congressional Committee issued as a result of such investigation, copies of which have heretofore been filed with the above-entitled court in the above-entitled action Number 5421 PH.

Affiant returned from Washington, D. C., to his office in Los Angeles, California, about the middle of June, 1946, and during the balance of the month was continuously engaged in innumerable conferences with associate counsel; in study of the record of the Congressional investigation; in attending a meeting of the Stockholders' Committee, and reporting thereat on the Congressional investigation; in attending two meetings of officers of stockholders of the Federal Home Loan Bank of Los Angeles, held in Los Angeles, and reporting thereat on said Congressional investigation, and in innumerable tele-



phone conferences with C. E. Berry, members of the [173] Stockholders Committee, officers of stockholders of the Federal Home Loan Bank of Los Angeles and many others.

The total time spent by affiant during the month of June, 1946, in the work outlined above amounted to over 183 hours. Of this time, 16 days were spent away from Los Angeles, where affiant's office is located.

During the month of July, 1946, affiant was engaged in the study of, and in many conferences with Messrs. Works and Whyte of O'Melveny & Myers concerning the cross complaint filed by the Long Beach Federal Savings and Loan Association against the Federal Home Loan Bank Commissioner, the Federal Home Loan Bank of Los Angeles and many others, seeking a determination of the legality of the seizure of said Federal Home Loan Bank of Los Angeles. He was also engaged in consideration of the question whether stockholders of the Federal Home Loan Bank of Los Angeles should join in the suit to be concerned by that bank, and whether such suit should be commenced, or answer to the Long Beach Federal Savings and Loan Association's cross-complaint should be filed, prior to the issuance of a report by the Congressional Committee of its investigation of the seizure of said bank and said association.

During the month of July and the early part of the month of August, 1946, affiant and the law firm of O'Melveny & Myers, were employed and retained  
Petitioners' Exhibit No. 2-27-50-2—(Continued)

by the association plaintiffs [173] in the above-mentioned action numbered 5678 WM. Said lawyers were retained and employed, (1) to consider said Orders Numbers 5082, 5083 and 5084 and any other orders of said Federal Home Loan Bank Administration which they deemed pertinent, and any actions taken pursuant thereto by the Federal Home Loan Bank Administration, its officers, agents, attorneys or employees, (2) to consider the rights of said associations as stockholders of the Federal Home Loan Bank of Los Angeles with respect to said orders and actions, (3) to advise what actions, suits, proceedings, or other steps said association might, could or should take to protect their rights, (4) in behalf of said associations to institute, defend, intervene or otherwise appear, or participate in such actions, suits or proceedings in the State or Federal courts, either in the State of California, or elsewhere, as said attorneys determined to be appropriate, and (5) generally, to take such action, whether like or unlike the foregoing, as said attorneys might deem appropriate to protect the rights and interests of said association.

During said month of July, 1946, affiant obtained needed information from said association stockholders of the Federal Home Loan Bank of Los Angeles, if such stockholders were to become plaintiffs in said suit proposed to be brought by the Federal Home Loan Bank of Los Angeles.

He studied a lengthy memorandum of authorities prepared [174] by Mr. Whyte as to the jurisdiction of the above-entitled court of the proposed suit to

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
be brought by the Federal Home Loan Bank of Los Angeles.

Because of the importance of the question as to the above-entitled court's jurisdiction of the suit proposed to be brought by the Federal Home Loan Bank of Los Angeles, and because the question of jurisdiction was involved in the above-entitled action numbered 5421 PH, brought by the Long Beach Federal Savings and Loan Association, he attended the hearing, on July 16, 1946, in the above-entitled court, of arguments as to the jurisdiction of said court of said action brought by the Long Beach association, and as to the constitutionality of Section 5(d) of the Home Owners' Loan Act of 1933.

He studied the Congressional Committee's report, issued July 25, 1946, of its investigation of the seizures of the Federal Home Loan Bank of Los Angeles and of the Long Beach association.

He attended a meeting of the Stockholders' Committee at which said report was considered. He had innumerable telephone conferences with associate counsel, members of the Stockholders' Committee, with officers of stockholders of the Federal Home Loan Bank of Los Angeles, and received and wrote many letters, all concerning the matters set forth herein.

The total time expended by affiant during the month of [175] July, 1946, on the matters above outlined, was 64.2 hours.

During the month of August, 1946, affiant assisted Messrs. Fussell, Works and Whyte of O'Mel-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
veny & Myers in the final preparation of the complaint in the above-entitled action numbered 5678 WM, filed herein August 22, 1946. He also assisted said attorneys in the final preparation of the answer of the Federal Home Loan Bank of Los Angeles to the cross-claim filed by the Long Beach association in said action numbered 5421 PH, wherein said Long Beach association sought a determination of the validity of the seizure of the Federal Home Loan Bank of Los Angeles.

He prepared a bulletin from the Stockholders' Committee advising the stockholders of the Federal Home Loan Bank of Los Angeles, and other interested parties, of the filing of said suit to recover the assets of the Federal Home Loan Bank of Los Angeles. He had much correspondence and innumerable telephone calls, all concerning the matters herein mentioned.

The total time spent by affiant during the month of August, 1946, in the matters above-outlined, was 36.5 hours.

During the month of September, 1946, affiant studied the opinion of the above-entitled court in the suit brought by the Long Beach association, numbered 5421 PH, holding that said court had jurisdiction of said action, and that Section 5(d) of the Home Owners' Loan Act of 1933 was unconstitutional, and considered the effect of said decision upon the action [176] brought by the Federal Home Loan Bank of Los Angeles, et al. He had many telephone conferences concerning said decision and the opinion of the court, with his associate



Petitioners' Exhibit No. 2-27-50-2—(Continued) counsel, with members of the Stockholders' Committee and with officers of stockholders of the Federal Home Loan Bank of Los Angeles. He prepared a bulletin from the Stockholders' Committee sending a copy of the court's opinion to stockholders of the Federal Home Loan Bank of Los Angeles and to other interested parties. He conferred with counsel for other litigants, and with affiant's associate counsel, as to approval by affiant and his associate counsel of the form of judgment entered in the Long Beach association case.

He conferred with Messrs. Works and Fussell as to whether the Federal Home Loan Bank of Los Angeles should seek an injunction against the Federal Home Loan Bank Commissioner and others, and should seek to have a three Judge Court appointed to consider the constitutionality of certain sections of the Federal Home Loan Bank Act, under which said Federal Home Loan Bank Commissioner purported to act in seizing the Federal Home Loan Bank of Los Angeles. He spent much time in research of said questions.

He also conferred at length with members of the Stockholders' Committee concerning the litigation and the effect of the decisions in the Long Beach Association case and the Federal Home Loan Bank of Los Angeles case. [177]

He studied the defendants' objections to the proposed findings and decree in the Long Beach association case, and conferred by telephone with Mr. Works with regard thereto.



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He studied the request of the defendants in the Long Beach case for a stay of execution.

He conferred at length with members of the Stockholders' Committee, and had a telephone conference with Mr. Works concerning possible consolidation of the above-entitled actions.

He studied the decree in the Long Beach association case filed on September 30, and had many telephone conferences with members of the Stockholders' Committee concerning said decree. In addition, throughout the month, he had many other telephone conferences with various parties interested in the litigation and much correspondence.

The total time spent by affiant during the month of September, 1946, in the matters above-outlined, was 32.9 hours.

During the month of October, 1946, affiant prepared a bulletin sent out by the Stockholders' Committee to the stockholders of the Los Angeles bank and others transmitting a copy of the judgment of the three judge court in the Long Beach association case.

Affiant received a copy of the order of Justice Rutledge of the Supreme Court of the United States staying execution [178] of said judgment in the Long Beach association case. He had many telephone conferences with members of the Stockholders' Committee and others concerning said order. He prepared a bulletin of the Stockholders' Committee transmitting to the stockholders of the Los Angeles bank and others a copy of the order staying

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
the execution of said judgment. He conferred on the telephone with his associate counsel with regard to said stay of execution.

He received and studied the papers served upon him by the defendants in the Long Beach association case appealing from said judgment.

He attended two meetings of the Stockholders' Committee.

He received and studied a lengthy memorandum of authorities prepared by Mr. Whyte relating to the unconstitutionality of certain sections of the Federal Home Loan Bank Act involved in the Federal Home Loan Bank of Los Angeles case, and did extensive research of his own on said question. He conferred with Messrs. Works and Whyte on said question.

He received and studied the motion to dismiss the Bank case, and the points and authorities in support thereof, filed by defendant Fahey.

In addition to the above-mentioned matters, affiant had innumerable telephone calls from and to his associate counsel, members of the Stockholders' Committee and many others, and had much correspondence, all relating to the matters herein [179] mentioned.

The total time spent by affiant during the month of October, 1946, in the matters above outlined, was 59.3 hours.

During the month of November, 1946, affiant had conferences with Messrs. Works, Whyte and Fussell and with members of the Stockholders' Committee.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

He had a telephone conference with Mr. Works with regard to the Federal Home Loan Bank of Los Angeles joining in the motion of the plaintiffs in the Long Beach Association case, to be made before the Supreme Court of the United States, to vacate the order of Justice Rutledge staying execution of the judgment entered in that case. Affiant and Mr. Works went to the office of Mr. Westover, and examined said motion and signed the same on behalf of the Federal Home Loan Bank of Los Angeles.

Affiant and Mr. Fussell conferred with members of the Stockholders' Committee with regard to the anticipated expenses of carrying on the litigation. In addition, affiant had many telephone calls to and from members of the Stockholders' Committee, and received and wrote a number of letters, all relating to the matters herein mentioned.

The total time spent by affiant during the month of November, 1946, in the matters above outlined, was 14.4 hours.

During the month of December, 1946, affiant conferred with counsel for other litigants and affiant's associate [180] counsel concerning the designation of additional pleadings to be incorporated in the record on appeal in the Long Beach association case, and signed such designation.

He had a telephone conference with counsel for other litigents as to affiant and his associate counsel signing a memorandum of points and authorities in rebuttal to points and authorities filed by the defendants on the motion to vacate the stay order

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in the Long Beach association case. He examined said memorandum, and signed the same.

He had conferences with Mr. Works and counsel for other litigants concerning the setting for hearing of motions to dismiss, etc. filed by the defendants in the Bank case. He attended a conference among Mr. Whyte, counsel for other litigants and members of the Stockholders' Committee, at which the status of both the Federal Home Loan Bank of Los Angeles case and the Long Beach association case, and the time of hearing of motions to dismiss the Bank case, were considered.

He received and studied affidavits of the Federal Home Loan Bank Administration in opposition to the Long Beach association's motion to vacate the order staying execution of the judgment obtained in that case, and rebuttal affidavits filed by the association, and the memorandum of points and authorities filed in support of the motion to vacate the stay order. [181]

He received and studied a supplemental memorandum filed by the appellants in the Long Beach case.

He attended a meeting of certain officers of stockholders of the Los Angeles bank, and reported on the status of the pending litigation.

He conferred with Messrs. Fussell, Works and Whyte concerning the relationship of the Long Beach association case to the Bank case.

He attended, with Messrs. Fussell and Whyte, a meeting of the Stockholders' Committee. At that meeting the advisability of the attorneys for the



Petitioners' Exhibit No. 2-27-50-2—(Continued)

Bank preparing and filing, in the Supreme Court of the United States, a brief in support of the judgment of the three judge court in the Long Beach association case was considered. It was the opinion of those present that the jurisdictional question involved in the Long Beach association case was important to the Bank case, and counsel for the Federal Home Loan Bank of Los Angeles were instructed to prepare and file in the United States Supreme Court a brief in support of the Long Beach association judgment.

Affiant also had many conferences with, and telephone calls to and from, the members of the Stockholders' Committee, and others, concerning the litigation, and he also had much correspondence with reference thereto.

The total time spent by affiant during the month of [182] December, 1946, in the matters above outlined, was 28.3 hours.

During the month of January, 1947, affiant had many conferences with members of the Stockholders' Committee as to the pending litigation, and had much correspondence concerning it. He studied recent decisions of the United States Supreme Court applicable to the pending litigation. He conferred with his associate counsel on points of law to be raised, and authorities to be cited in the brief to be filed in support of the judgment in the Long Beach case. In addition, he had many telephone calls, to and from, members of the Stockholders'



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Committee and others and much correspondence, all relating to the matters herein mentioned.

The total time spent by affiant during the month of January, 1947, in the matters above outlined, was 12.3 hours.

During the month of February, 1947, affiant conferred with members of the Stockholders' Committee. He prepared a bulletin from the Stockholders' Committee with regard to certain legislation pending in the Congress amending the Federal Home Loan Bank Act, and restoring the Federal Home Loan Bank of Los Angeles. He received and considered objections of the United States Acting Solicitor to the record on appeal in the Long Beach association case. He attended a meeting of the Stockholders' Committee held at San Francisco. He had many telephone calls to and from [183] members of the Stockholders' Committee, and received and wrote many letters, all relating to the matters herein stated.

The total time spent by affiant during the month of February, 1947, in the matter above outlined, was 14.5 hours.

During the month of March, 1947, affiant received and studied motions for allowances of attorneys' fees and expenses, and supporting papers, filed by the plaintiffs and others in the Long Beach case.

He conferred with members of the Stockholders' Committee concerning the legislation pending in the Congress to amend the Federal Home Loan Bank Act, and to restore the Federal Home Loan Bank

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
of Los Angeles. He had much correspondence with reference to said bills with members of the Stockholders' Committee, and with officers of stockholders of the Los Angeles Bank. He conferred at length with members of the Stockholders' Committee concerning the proposed hearings upon said bills, and the attendance of members of the Stockholders' Committee and other representatives of stockholders of the Los Angeles Bank at such hearings.

He conferred with members of the Stockholders' Committee concerning a proposed meeting of stockholders of the Federal Home Loan Bank of San Francisco.

He attended a meeting of the Stockholders' Committee. In addition, affiant had many telephone calls and much [184] correspondence concerning such matters.

The total time spent by affiant during the month of March, 1947, in the matters above outlined, was 21.9 hours.

During the month of April, 1947, affiant conferred with Messrs. Works and Whyte and counsel for other litigants with regard to the brief to be filed in the Supreme Court of the United States by the Federal Home Loan Bank of Los Angeles, in support of the judgment in the Long Beach association case. He collaborated with Messrs. Works and Whyte in the preparation of said brief.

He prepared a lengthy memorandum with regard to the capital structures of the Federal Home Loan Banks of Los Angeles, Portland and San Francisco,

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
at the time of the seizure of the Federal Home Loan Bank of Los Angeles, and as to the provisions of the Federal Home Loan Bank Act with reference to the issuance of consolidated Federal Home Loan Bank debentures, and the retirement of capital of Federal Home Loan Banks.

He prepared a synopsis and index of the testimony presented at the hearing before the Congressional Committee investigating the seizure of the Federal Home Loan Bank of Los Angeles and the Long Beach association.

He received and studied the petition of appellants in the Long Beach case to the Supreme Court of the United States for a writ of mandamus and/or prohibition with regard [185] to the order of the United States District Court allowing attorneys' fees and expenses in the Long Beach case. He studied the briefs filed by the plaintiffs, the Long Beach association, Robert Wallis and Title Service Company, filed in the United States Supreme Court. He studied appellants' brief filed in the United States Supreme Court.

He prepared a resolution to be offered by representatives of the Stockholders' Committee at a proposed meeting of stockholders of the Federal Home Loan Bank of Los Angeles.

He had many telephone conferences with his associate counsel and with counsel in the Long Beach case. He also had many telephone calls to and from members of the Stockholders' Committee and representatives of stockholders of the Federal

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Home Loan Bank of Los Angeles, and much correspondence, all relating to the matters herein mentioned.

The total time spent by affiant during the month of April, 1947, in the matters above-outlined, was 96.2 hours.

During the month of May, 1947, affiant had many conferences with members of the Federal Home Loan Bank Committee and with officers of stockholders of the Federal Home Loan Bank of Los Angeles, with regard to the hearing of the appeal in the Long Beach case by the United States Supreme Court, and as to steps to be taken by the Federal Home Loan Bank of Los Angeles upon the Supreme Court of the United [186] States deciding such appeal, and with regard to pending Congressional Legislation for the restoration of the Federal Home Loan Bank of Los Angeles and amendments to the Federal Home Loan Bank Act. He had many telephone calls to and from associate counsel, and counsel in the Long Beach association case, and wrote and received many letters, all concerning the matters herein mentioned.

The total time spent by affiant during the month of May, 1947, in the matters above outlined, was 12.1 hours.

During the month of June, 1947, affiant received and studied a copy of the United States Supreme Court opinions deciding the appeal in the Long Beach association case, and denying the petition for writs of mandamus and/or prohibition as to the



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
allowance of attorneys' fees and expenses in the Long Beach association case. He had telephone conferences with Mr. Works concerning the United States Supreme Court opinions in the Long Beach association case.

He received and studied a copy of the President's Reorganization Plan No. 3 of 1947, providing for reorganization of the Federal Home Loan Bank Administration, and for a three-man Home Loan Bank Board instead of a single Federal Home Loan Bank Commissioner. He had many conferences with members of the Stockholders' Committee and with officers of stockholders of the Federal Home Loan Bank of Los Angeles concerning Reorganization Plan No. 3 and its effect on the re-establishment of the Federal Home Loan Bank of Los [187] Angeles.

He prepared resolutions to be offered by members of the Stockholders' Committee at a meeting of stockholders of the Federal Home Loan Bank of San Francisco to be held on July 28, 1947, declaring said Federal Home Loan Bank of San Francisco to have been unlawfully created. He had innumerable telephone conferences with members of the Stockholders' Committee and others, and much correspondence, all relating to the matters herein mentioned.

The total time spent by affiant during the month of June, 1947, in the matters above outlined, was 13.1 hours.

During the month of July, 1947, affiant had



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
lengthy conferences with Messrs. Works and Whyte and with counsel for other litigants. He attended with Messrs. Works and Whyte, a lengthy meeting of the Stockholders' Committee at which the effect of the United States Supreme Court decision in the Long Beach Association case and other matters affecting the pending litigation were considered.

He prepared a bulletin to be sent out by the Stockholders' Committee concerning the United States Supreme Court decision in the Long Beach Association case.

He had many telephone calls to and from stockholders of the Federal Home Loan Bank of Los Angeles with regard to the meeting of stockholders of the Federal Home Loan Bank of San Francisco to be held in San Francisco on July 28, [188] 1947. He conferred at length with members of the Stockholders' Committee, prior to the meeting of stockholders of the Federal Home Loan Bank of San Francisco. He attended the meeting of stockholders of the Federal Home Loan Bank of San Francisco held in San Francisco on July 28, 1947.

In addition he had many telephone calls and much correspondence with members of the Stockholders' Committee, and with representatives of stockholders of the Federal Home Loan Bank of Los Angeles, all relating to the matters herein mentioned.

The total time spent by affiant during the month of July, 1947, in the matters above outlined, was 39.1 hours.

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During the month of August, 1947, affiant had lengthy conferences with his associate counsel and with counsel for the Long Beach association with reference to opposition of the defendant Fahey, et al., to the interventions filed in the Long Beach case, whereby trust deeds held by the Long Beach association were reconveyed; also with reference to substituting members of the Home Loan Bank Board as parties defendant in the litigation. He also had many telephone conferences with his associate counsel and with counsel for the Long Beach association with regard to the above-mentioned matters.

He collaborated with his associate counsel in the preparation of a motion for substitution of the Home Loan Bank [189] Board members as defendants in the Federal Home Loan Bank of Los Angeles case. He had many telephone calls, to and from, and much correspondence with, members of the Stockholders' Committee and others concerning the matters herein mentioned.

The total time spent by affiant during the month of August, 1947, in the matters above outlined, was 9.4 hours.

During the month of September, 1947, affiant had conferences with his associate counsel and with attorneys for the Long Beach association, with regard to the substitution of members of the Home Loan Bank Board as parties defendant in the pending litigation.

He conferred with his associate counsel concern-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
ing the answer to be made by the Federal Home Loan Bank of Los Angeles to intervention proceedings in the pending litigation. He examined and signed approval as to form of the above-entitled Court's order denying a stay of that court's order allowing attorneys' fees.

He conferred with Mr. Whyte concerning a plan for reestablishment of the Federal Home Loan Bank of Los Angeles, which officials of the Home Loan Bank Board requested be prepared. He prepared an outline of the problems involved in the preparation of such a plan.

He conferred with members of the Stockholders' Committee, and had many telephone calls to and from members of the Committee and others, and wrote and received many letters, [190] all concerning the matters herein mentioned.

The total time spent by affiant during the month of September, 1947, on the matters above outlined, was 26.7 hours.

During the month of October, 1947, affiant considered the problems involved in a plan for restoration of the Federal Home Loan Bank of Los Angeles, and had many conferences with his associate counsel concerning such a plan. He collaborated with his associate counsel in the preparation of such a plan.

He had many conferences with attorneys for the Long Beach association with regard to problems in connection with titles to properties covered by

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
trust deeds held by the Long Beach association, and with regard to the Federal Home Loan Bank of Los Angeles, asserting its claims to deeds of trust deposited by the conservator of the Long Beach association as collateral to loans made to him by the Federal Home Loan Bank of San Francisco.

Affiant and Mr. Fussell attended a meeting of the Stockholders' Committee, at which a plan for restoration of the Federal Home Loan Bank of Los Angeles was considered.

He had innumerable telephone conferences with his associate counsel, with attorneys for the Long Beach association and with members of the Stockholders' Committee and much correspondence concerning the matters herein mentioned. [191]

The total time spent by affiant during the month of October, 1947, in the matters above outlined, was 54.7 hours.

During the month of November, 1947, affiant attended the hearing before the above-entitled Court, on November 3, 4, 6, 7 and 10, 1947, of various motions of the defendants which were denied on November 10, 1947. He studied a transcript of the Court's decision on defendants' motions to dismiss, etc.

He conferred with Messrs. Works and Whyte, and with counsel for the defendant, Federal Home Loan Bank of San Francisco, with regard to his proposal to abate the cross-claim of the Federal Home Loan Bank of Los Angeles against the Fed-



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
eral Home Loan Bank of San Francisco filed in  
the Long Beach case.

He collaborated with his associate counsel in the preparation of a memorandum of points and authorities in connection with the various motions filed by the defendants.

He studied a draft of points and authorities in opposition to the motion of the Federal Home Loan Bank of San Francisco to dismiss the Federal Home Loan Bank of Los Angeles case prepared by Mr. Whyte.

He prepared a bulletin sent out by the Stockholders' Committee reporting the decisions of Judge Hall in the pending litigation.

He had innumerable telephone conversations with his [192] associate counsel, members of the Stockholders' Committee and others, and much correspondence, all relating to the matters mentioned herein.

The total time spent by affiant during the month of November, 1947, in the matters above outlined, was 40.8 hours.

During the month of December, 1947, affiant received and studied a copy of plaintiffs' first amended and supplemental complaint in the Long Beach association case. He received and examined various notices of motions, applications for, and orders, extending time, a notice of appeal from orders requiring deposit of notes, deeds of trust, etc., and an order extending defendants' time to



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plead to plaintiffs' first amended and supplemental complaint in the Long Beach case.

Affiant had many telephone calls to and from his associate counsel, members of the Stockholders' Committee and others, relating to the matters herein mentioned.

The total time spent by affiant during the month of December, 1947, in the matters above outlined, was 5.3 hours.

During the month of January, 1948, affiant conferred with Mr. Whyte in preparation for arguments on January 12, 1948, of defendants' motions to dismiss, etc., the Bank case.

He obtained data as to the number of stockholders of the Federal Home Loan Bank of Los Angeles at the time it [193] was seized, and as to its dividend record from its organization down to the time of its seizure.

He attended the hearing of the defendants' motions to dismiss, etc., the bank case, which were continued to March 22, 1948, at the request of attorneys for the defendants.

He conferred with members of the Stockholders' Committee with reference to the resolution of the Home Loan Bank Board adopted about January 17, 1948, restoring the Long Beach association to its management.

He had innumerable telephone calls from members of the Stockholders' Committee, from representatives of stockholders of the Los Angeles bank and from many others concerning the restora-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
tion of the Long Beach association, and the prospects for restoration of the Federal Home Loan Bank of Los Angeles.

He had several lengthy telephone conferences with Mr. Whyte concerning the petition filed by the Long Beach association for an order of the above-entitled court, returning the Long Beach association to its management, and the attorneys for the Federal Home Loan Bank of Los Angeles signing a waiver of notice of hearing of such petition.

He conferred with members of the Stockholders' Committee concerning the restoration of the Long Beach association. He prepared a bulletin sent out by the Stockholders' [194] Committee, informing the stockholders of the Federal Home Loan Bank of Los Angeles of the restoration of the Long Beach association.

He received and studied a copy of the court's order restoring the Long Beach association and of the order appointing a special master to supervise such restoration. He conferred with members of the Stockholders' Committee and Mr. Whyte concerning possible restoration of the Los Angeles bank by the Home Loan Bank Board.

The total time spent by affiant during the month of January, 1948, in the matters above outlined, was 25.3 hours.

During the month of February, 1948, affiant had lengthy conferences with Mr. Whyte with reference to a petition for an order to show cause why the Federal Home Loan Bank of San Francisco should

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not be required to deposit with the court, the notes and deeds of trust held by the bank as collateral.

He had many telephone conferences with members of the Stockholders' Committee concerning the proposed restoration of the Federal Home Loan Bank of Los Angeles by the Home Loan Bank Board.

He attended a meeting of the Stockholders' Committee, at which the proposed plan for restoration of the Los Angeles bank was considered and the Long Beach association [195] order to show cause why all notes and deeds of trust held by the San Francisco bank as collateral to loans made to the conservator of that association should not be deposited in court was also considered.

Affiant had many telephone conversations with members of the Stockholders' Committee with reference to a proposed meeting to be held by members of the Stockholders' Committee with members of the Home Loan Bank Board, in Washington, D. C., concerning restoration of the Federal Home Loan Bank of Los Angeles.

He drafted a suggested resolution to be adopted by the Home Loan Bank Board restoring the Federal Home Loan Bank of Los Angeles and conferred with Mr. Whyte on the draft of such suggested Home Loan Bank Board resolution. He revised said draft and thereafter conferred with Mr. Fussell on the second draft of said resolution.

He left Los Angeles late in February, 1948, with certain members of the Stockholders' Committee

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for a conference in Washington, D. C., with the members of the Home Loan Bank Board on the restoration of the Los Angeles Bank, and while en route there conferred with said members of the Stockholders' Committee concerning such conference.

He participated in a conference among members of the Home Loan Bank Board, their attorneys, attorneys for the Long Beach association, attorneys for the Federal Home Loan [196] Bank of San Francisco and others in Washington, D. C.

He spent about 10 days on said trip to Washington, D. C.

In addition to said matters, affiant had many telephone conferences with his associate counsel, members of the Stockholders' Committee and much correspondence concerning the matters herein mentioned.

The total time spent by affiant during the month of February, 1948, in the matters above outlined, was 85.9 hours.

During the month of March, 1948, affiant conferred with Messrs. Fussell, Works and Whyte concerning the conferences with the Home Loan Bank Board members in Washington, D. C., as to restoration of the Los Angeles Bank.

He studied the draft prepared by Mr. Whyte of the return of the Federal Home Loan Bank of Los Angeles to the order to show cause, obtained by the Long Beach association, why the \$6,300,000 of



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
promissory notes executed by the conservator of the Long Beach association to the Federal Home Loan Bank of San Francisco, and the collateral securing the same, should not be deposited in court.

He conferred with members of the Stockholders' Committee on the conferences in Washington, D. C., with the members of the Home Loan Bank Board and others.

He attended a meeting of the Stockholders' Committee, at which reports were made as to the conferences with the Home Loan Bank Board members and others. [197]

He conferred with Messrs. Works and Whyte, with regard to the proposed restoration of the Federal Home Loan Bank of Los Angeles.

On March 8, 1948, he attended an all day hearing in the above-entitled court of the Long Beach association's order to show cause above mentioned.

He conferred with Messrs. Fussell, Works and Whyte, and with counsel for other litigants with regard to proposals for a stipulation as to the deposit of money and collateral in court on the Long Beach association's order to show cause. On March 10, 1948, he attended a further all day hearing on the Long Beach association's order to show cause.

He had several telephone conferences with associate counsel with regard to a proposed stipulation as to the investment of cash belonging to the Long Beach association on deposit with the court.

He considered and signed a waiver of notice of hearing of a petition for and an approval of an



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
order of the court permitting the court's special master in the Long Beach association case to attend a meeting of the board of directors of the San Francisco Bank to be held in Salt Lake City.

He drafted a suggested resolution of the Home Loan Bank Board restoring the Los Angeles Bank, embodying therein suggestions resulting from the conference, in [198] Washington, D. C., with members of the Home Loan Bank Board and others, and he conferred with Messrs. Fussell, Works and Whyte as to said draft.

He had a long distance telephone conference among members of the Stockholders' Committee and Mr. Fussell, concerning Stockholders' Committee's position on the proposals made by the San Francisco Bank for restoration of the Los Angeles Bank.

He had a further conference with Messrs. Fussell, Works and Whyte as to the suggested Home Loan Bank Board resolution restoring the Los Angeles Bank.

He had a lengthy telephone conference with counsel for the Home Loan Bank Board, concerning the proposals of the San Francisco Bank for restoration of the Los Angeles Bank. He had lengthy conferences with members of the Stockholders' Committee concerning said proposals. He conferred with Messrs. Fussell and Whyte concerning said proposals. He attended a meeting of the Stockholders' Committee, at which said proposals were considered.

He received and examined the notice of motion,

Petitioners' Exhibit No. 2-27-50-2—(Continued) and motion, of the Long Beach association with regard to releasing from the deposit in court certain collateral in excess of that needed to secure the \$6,300,000 of promissory notes deposited. He had a telephone conference with Messrs. Whyte and Works with regard to the attorneys for [199] the Los Angeles Bank consenting to such an order being made by the court.

The total time spent by this affiant during the month of March, 1948, in the matters above outlined, was 68.4 hours.

During the month of April, 1948, affiant had many telephone conferences with members of the Stockholders' Committee concerning the proposals for restoration of the Federal Home Loan Bank of Los Angeles, the appointment of a sub-committee of the Stockholders' Committee to confer with a committee of directors of the San Francisco Bank on such proposals, and a meeting of the sub-committee of the Stockholders' Committee, with the board of directors of the Federal Home Loan Bank of San Francisco at Salt Lake City.

He had a lengthy conference with counsel for other litigants concerning plans for restoration of the Los Angeles Bank, and the taking of a vote of stockholders of the Los Angeles Bank as to its restoration.

He attended a meeting of officers of stockholders of the Los Angeles Bank, and thereat reported the status of pending litigation, and of proposals for restoration of the Los Angeles Bank.

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He prepared a report of the Stockholders' Committee, to be sent to all stockholders of the Los Angeles Bank and [200] others, as to the negotiations for the restoration of the Los Angeles Bank. In addition, he had much correspondence and many telephone calls to and from members of the Stockholders' Committee and others, concerning the matters herein mentioned.

The total time spent by affiant during the month of April, 1948, in the matters above outlined, was 21.3 hours.

During the month of May, 1948, affiant received and studied copies of the answer of the Federal Home Loan Bank of San Francisco to the complaint of the Federal Home Loan Bank of Los Angeles. He also received and studied a copy of the answer of the San Francisco Bank to the cross-claim of the Los Angeles Bank filed in the Long Beach association case.

He had a telephone conference with Mr. Whyte with regard to substituting the new Home Loan Bank Board members as parties defendant in the Bank case.

He had many telephone conferences with members of the Stockholders' Committee concerning statements made by the Home Loan Bank Board that resolutions would be adopted by that board restoring the Federal Home Loan Bank of Los Angeles.

He conferred with members of the Stockholders' Committee concerning substitution of Home Loan

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Bank Board member as [201] parties defendant in the litigation.

He had a lengthy conference with members of the Stockholders' Committee concerning the proposed restoration of the Los Angeles Bank and concerning the obtaining of an expression of the views of the stockholders of the Federal Home Loan Bank of Los Angeles with regard to its restoration.

He prepared a form of ballot, for voting on the dissolution of the Federal Home Loan Bank of San Francisco and restoration of the Federal Home Loan Bank of Los Angeles, to be sent to stockholders of the Federal Home Loan Bank of Los Angeles, as to their desires for restoration of the Los Angeles Bank, and he conferred at length with Mr. Whyte as to such ballot. He prepared a form of letter from the Stockholders' Committee transmitting the ballot to stockholders of the Los Angeles Bank.

In addition, he had many telephone calls to and from his associate counsel, counsel for the Long Beach association, members of the Stockholders' Committee and others, all relating to the matters herein mentioned. He also had much correspondence concerning these matters.

The total time spent by affiant during the month of May, 1948, in the matters above outlined, was 22.8 hours.

During the month of June, 1948, affiant conferred with Messrs. Fussell, Works and Whyte



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
concerning the use of the ballots cast by stockholders of the Federal Home Loan Bank [202] of Los Angeles.

He spent many hours in research of questions of law as to the effect of the ballots cast by the stockholders of the Federal Home Loan Bank of Los Angeles, and he conferred with his associate counsel, Messrs. Fussell, Works and Whyte, as to further steps to be taken in the litigation.

He received and studied a copy of the supplemental cross-claim files by the Long Beach association.

He conferred for many hours with counsel for the Home Loan Bank Board, concerning plans for restoration of the Los Angeles Bank. He attended a meeting of the Stockholders' Committee, at which counsel for the Home Loan Bank Board was present, during which methods of restoration of the Los Angeles Bank were discussed.

He drafted a letter from attorneys for the Los Angeles Bank to the directors of the San Francisco Bank, advising them that they would be held personally liable if they used funds of the Los Angeles Bank to resist its restoration.

He attended a conference of various members and officials of the Home Loan Bank Board, and members of the Stockholders' Committee held in Coronado, California, concerning restoration of the Los Angeles Bank.

He conferred with counsel for the Home Loan



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
Bank Board at Coronado, concerning methods of accomplishing the proposed [203] restoration of the Los Angeles Bank.

He had many telephone conferences with members of the Stockholders' Committee concerning the proposals made by the Home Loan Bank Board members and their counsel.

He conferred with Messrs. Fussell, Works and Whyte concerning new proposals made by the Home Loan Bank Board members as to the restoration of the Los Angeles Bank and had a long telephone conference with counsel for the Home Loan Bank Board on the new proposals for restoration of the Los Angeles Bank.

He was engaged in research of questions of liability of directors in effecting compromise settlements and conferred with Mr. Whyte thereon.

The total time spent by affiant during the month of June, 1948, in the matters above outlined, was 45.9 hours.

During the month of July, 1948, affiant prepared a draft of a proposed settlement disposing of the above-entitled consolidated actions, embodying therein the proposals discussed with counsel for the Home Loan Bank Board.

He conferred with his associate counsel, Messrs. Fussell and Whyte, concerning said settlement.

He conferred with Messrs. Fussell and Whyte concerning an opinion to be rendered as to the personal liability of directors of the Federal Home

Petitioners' Exhibit No. 2-27-50-2—(Continued)

Loan Bank of Los Angeles if a compromise settlement of the litigation be effected. [204]

He had a lengthy telephone conference with counsel for the Home Loan Bank Board in Washington, D. C., concerning the proposed settlement.

He had a long telephone conference with Mr. Whyte concerning the hearing before the above-entitled court on July 6, 1948, at Fresno, California.

He conferred with one of the attorneys for the Federal Home Loan Bank of San Francisco, concerning said proposed settlement.

He had many conferences with one of the attorneys for the Home Loan Bank Board, concerning the proposed settlement.

He received and studied a copy of the petition of the Long Beach Association for an order to show cause why the Federal Home Loan Bank of San Francisco should not be dissolved.

He collaborated with his associate counsel in the preparation of the answer of the Federal Home Loan Bank of Los Angeles to the amended and supplemental cross-claim of the Long Beach association.

He had a lengthy conference with Messrs Fussell and Whyte, at which a draft of the opinion on the liability of directors of the Los Angeles Bank, in the event a compromise settlement of the litigation be effected, was studied and corrected.

He had a lengthy conference with attorneys for the [205] Long Beach association concerning the proposed settlement.

He conferred with Mr. Fussell as to the proposed

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
settlement, and suggestions with regard thereto made by attorneys for the Long Beach association.

He had a lengthy conference with one of the attorneys for the Home Loan Bank Board, during which said proposed settlement was redrafted.

He had a telephone conference with a member of the Stockholders' Committee concerning the action commenced by ten savings and loan associations in the United States District Court for the Northern District of California at San Francisco.

He had many telephone conferences with members of the Stockholders' Committee, his associate counsel, counsel for the Long Beach association, and counsel for the Home Loan Bank Board and others concerning said suit.

He had many telephone conferences with his associate counsel and with attorneys for the Long Beach association concerning the petition of the Long Beach association for a temporary restraining order and an injunction pendente lite against the maintenance of said action.

He attended a hearing before the above-entitled Court, at which the petition for a temporary restraining order and an injunction pendente lite against said action, brought by said ten associations, was presented, and a [206] temporary order restraining further proceedings in said case was obtained.

He attended a meeting of the Stockholders' Committee, at which meeting various members and

Petitioners' Exhibit No. 2-27-50-2—(Continued)

officials of the Home Loan Bank Board were present, and at which said action instituted in the United States District Court for the Northern District of California, and the proposed settlement of the litigation, were considered.

He conferred with Mr. Fussell and with counsel for other litigants concerning said suit in the United States District Court for the Northern District of California, and the proposed settlement of the pending litigation.

He attended the hearing before the above-entitled Court on the petition of the Long Beach association for an injunction pendente lite against the maintenance of said San Francisco suit, which injunction was granted.

In addition, he had innumerable telephone calls to and from members of the Stockholders' Committee, his associate counsel, counsel for the Long Beach association and many others and had much correspondence, all relating to the matters herein mentioned.

The total time spent by affiant during the month of July, 1948, in the matters above outlined, was 87.2 hours

During the month of August, 1948, affiant had a great many conferences with members of the Stockholders' Committee, [207] with one of the attorneys for the Home Loan Bank Board, with affiant's associate counsel and with counsel for the Long Beach association concerning the proposed settlement of



Petitioners' Exhibit No. 2-27-50-2—(Continued)  
the pending litigation. He redrafted the documents relating to proposed settlement.

He arranged for, and had, a conference in Oakland, California, with the attorneys for the ten associations, which filed the action in the United States District Court for the Northern District of California, concerning the proposed settlement of the pending litigation.

He arranged for, and had, a conference in San Francisco, California, with one of the attorneys for the San Francisco Bank, one of the attorneys for the Home Loan Bank Board and Mr. Fussell, concerning the proposed settlement and the documents relating thereto. He redrafted the documents setting up the proposed settlement to incorporate changes made therein during said conference.

He received and studied a copy of the answer of defendant R. E. Hegg, to the amended and supplemental cross-claim of the Long Beach association.

He received and studied a circular letter to the stockholders of the Los Angeles Bank mailed by attorneys for the ten plaintiff associations in the San Francisco suit.

He had many conferences with counsel for the Home Loan Bank Board concerning the proposed settlement of the pending [208] litigation.

He again redrafted the documents relating to the proposed settlement, and arranged for his attendance at, and attended, a meeting of the board of directors of the San Francisco Bank, held in Se-

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
attle on August 25, 1948, at which said proposed settlement was considered.

He collaborated with his associate counsel in the preparation of the return of the Federal Home Loan Bank of Los Angeles to the Long Beach association's order to show cause why the San Francisco Bank should not be dissolved.

He attended, with Mr. Fussell, a meeting of the Stockholder's Committee held.

He received from counsel for the Home Loan Bank Board and studied, a copy of a proposed resolution of the Home Loan Bank Board restoring the Los Angeles Bank.

In addition, he had innumerable conferences with, and telephone calls to and from, members of the Stockholders' Committee, his associate counsel, attorneys for the Long Beach association, counsel for the Home Loan Bank Board and many others, all relating to the matters herein mentioned.

The total time spent by affiant during the month of August, 1948, in the matters above outlined, was 96.1 hours.

During the month of September, 1948, affiant had many [209] telephone conferences with Messrs. Fussell, Whyte, counsel for the Home Loan Bank Board, counsel for other litigants and others, with regard to the proposed resolution of the Home Loan Bank Board restoring the Los Angeles Bank.

He attended a meeting of the Stockholders' Committee held at Santa Barbara, California.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

He attended the hearing before the above-entitled Court of the motion of the Long Beach association for an order restraining the meeting of stockholders of the Federal Home Loan Bank of San Francisco, to be held in Sun Valley, Idaho, on September 20, 1948, from taking action upon the proposed restoration of the Los Angeles Bank.

He conferred with Mr. Fussell concerning preparations for trial of the pending litigation.

He received copies of, and studied the statements of the Long Beach association in opposition to the motion of the ten association plaintiffs in the San Francisco suit, and of the Home Loan Bank Board to dismiss the Long Beach association's amended and supplemental cross-claim.

He received and studied the statement, and points and authorities, filed by the plaintiffs in the Long Beach association case, in opposition to the motion of the Home Loan Bank Board to dismiss the Long Beach association's cross-claim.

He had innumerable telephone conferences with members [210] of the Stockholders' Committee, his associate counsel, with counsel for the Long Beach association, with counsel for the Home Loan Bank Board and many others, and he had much correspondence, all relating to the matters herein mentioned.

The total time spent by affiant during the month of September, 1948, in the matters above outlined, was 47.4 hours.

During the month of October, 1948, affiant had

Petitioners' Exhibit No. 2-27-50-2—(Continued)  
many telephone conferences with his associate counsel, with members of the Stockholders' Committee and others, concerning a proposed hearing to be held by the Home Loan Bank Board on the restoration of the Federal Home Loan Bank of Los Angeles. He had a lengthy conference with counsel for other litigants concerning such hearing.

He had a conference with Messrs. Works and Whyte concerning such proposed hearing, and a further conference with Messrs. Whyte and counsel for other litigants concerning said proposed hearing. He had a long telephone conference with counsel for the Home Loan Bank Board in Washington, D. C., concerning said proposed hearing. He had many telephone conferences with members of the Stockholders' Committee, and much correspondence with members of the Stockholders' Committee and others, concerning said proposed hearing. [211]

He attended the two-day hearing of the motion of the Long Beach association, joined by the Federal Home Loan Bank of Los Angeles for inspection of the books and records of the Federal Home Loan Bank of San Francisco.

He conferred with counsel for other litigants, Mr. Whyte and others concerning a new proposal for restoration of the Los Angeles and Portland Banks.

He had a great many telephone conferences with members of the Stockholders' Committee and with his associate counsel concerning such proposal.



Petitioners' Exhibit No. 2-27-50-2—(Continued)

He obtained the approval of the United States District Attorney's office of the form of the court's order for preliminary inspection of the books and records of the Federal Home Loan Bank of San Francisco, and obtained the signature of Judge Hall thereto, and filed the same.

He attended the hearing before Special Master Walker at the Los Angeles offices of the Federal Home Loan Bank of San Francisco, at which a preliminary inspection of books and records of that office of the bank was made, and studied the transcript of said hearing.

The total time spent by affiant during the month of October, 1948, in the matters above outlined, was 86.5 hours.

The legal services necessarily performed by affiant from and after October 31, 1948, to and including the date [212] of filing hereof, have not as yet been calculated.

The total time spent by affiant from March 29, 1946, to October 31, 1948, inclusive, on the matters herein mentioned, amounts to 1645.5 hours, equal to 274 six-hour working days. Affiant spent 27 twenty-four-hour days away from Los Angeles, where his office is located, on three trips to San Francisco, one each to Fresno, California, and Seattle, Washington, and two trips to Washington, D. C.

The hours stated above to have been spent upon the matters hereinabove set forth are based upon daily time sheets kept by affiant.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

Affiant estimates that during the time covered by this affidavit he has had in excess of 2500 telephone conversations and has written over 175 letters. Affiant during said time prepared so many papers, reports and memoranda, that it is impossible for him to enumerate them, or to estimate their number.

No attorneys' fees have heretofore been paid or allowed to Messrs. O'Melveny & Myers, and Richard FitzPatrick, Esq., or any of them, on account of their legal services rendered in Civil Action 5678-PH(WM) and in Civil Action 5421-PH, except as follows: [213]

Date	To Whom Paid	Amount
7/31/1946	Richard FitzPatrick .....	\$2500.00
2/18/1948	Richard FitzPatrick .....	2500.00
		<hr/>
10/15/1946	O'Melveny & Myers .....	\$2500.00
2/17/1948	O'Melveny & Myers .....	2500.00
		<hr/>
		\$5,000.00

Wherefore, your affiant prays that the above-entitled Court make and enter the order specified on Pages 2 and 3 of the motion to which this affidavit is attached.

/s/ RICHARD FITZ PATRICK.

Subscribed and sworn to before me this 4th day of January, 1949.

[Seal] /s/ RAYMOND A. NELSON,

Notary Public in and for Said  
County and State. [214]

\* \* \*

## PETITIONERS' EXHIBIT No. 2-27-50-4

O'MELVENY &amp; MYERS,

433 South Spring Street,  
Los Angeles 13, California,  
Michigan 2611. [248]

RICHARD FITZ PATRICK,

1400 C. C. Chapman Building,  
Los Angeles, California,  
Tucker 1576.

Attorneys for Plaintiffs in Civil Action No.  
5678-PH (WM) and for Defendant,  
Third-Party Defendant, Cross-Claimant  
and Cross-Defendant FHLB of L. A., a  
Body Corporate, in Civil Action No.  
5421-PH.

In the District Court of the United States for the  
Southern District of California, Central Division  
Civil Action No. 5679-PH (WM) (Consolidated  
With Civil Action No. 5421-PH)

FEDERAL HOME LOAN BANK OF LOS AN-  
GELES, a Body Corporate, et al.,  
Plaintiffs,

vs.

FEDERAL HOME LOAN BANK OF PORT-  
LAND, Sometimes Known and Referred To as  
Federal Home Loan Bank of San Francisco,  
a Body Corporate, et al.,  
Defendants.

Petitioners' Exhibit No. 2-27-50-4—(Continued)

PAUL MALLONEE, et al.,

Plaintiffs,

vs.

JOHN F. FAHEY, et al.,

Defendants.

AFFIDAVIT OF RICHARD FITZ PATRICK  
IN SUPPORT OF MOTION FOR ORDER  
DIRECTING PAYMENT OF ATTORNEYS'  
FEES ON ACCOUNT

State of California,

County of Los Angeles—ss.

Richard FitzPatrick, being first duly sworn,  
says:

He is now, and at all times herein mentioned has been, one of the attorneys for the Federal Home Loan Bank of Los Angeles (sometimes hereinafter referred to as "Los Angeles Bank"), one of the plaintiffs in action numbered 5678-PH (WM) and defendant, third-party defendant, cross-claimant and cross-defendant in action numbered 5421-PH, and for the following named association plaintiffs in action numbered 5678-PH (WM): Coast Federal Savings and Loan Association, Standard Federal Savings and Loan Association, Central Building and Loan Association, State Savings and Loan Association, Los Angeles American Savings and Loan Association, and that he is also one of the



Petitioners' Exhibit No. 2-27-50-4—(Continued)  
attorneys for the Stockholders' Committee of the  
Federal Home Loan Bank of Los Angeles.

This affidavit is made in support of the motions of said Los Angeles Bank and said association plaintiffs above named for an order directing payment of attorneys' fees on account and for an order directing repayment of moneys heretofore advanced by Shareholders' Protective Committee filed herein on January 6, 1949, and the supplements thereto filed herein on July 8, 1949, and for the purpose of countering the affidavits of J. Francis Moore and Ernest E. Reardon attached [250] to the memorandum in opposition to motions for orders directing payment of attorneys' fees on account and repayment of moneys advanced, and the supplements thereto, which memorandum was filed herein on September 23, 1949, by the defendants Home Loan Bank Board, its members, A. V. Ammann as Conservator and the Federal Savings and Loan Insurance Corporation.

Affiant was present at a meeting of California savings and loan executives and employees held in San Francisco, California, on the evening of April 30, 1946. Harland G. Keller, then one of three assistant governors of the Federal Home Loan Bank System, addressed said meeting for the purpose of presenting the Federal Home Loan Bank Administration's side of the controversy over the liquidation and reorganization of the Los Angeles Bank and its merger into the Federal Home Loan

Petitioners' Exhibit No. 2-27-50-4—(Continued)

Bank of Portland, hereinafter referred to as the Portland Bank.

Harland G. Keller then and there stated, in substance and effect as follows: The liquidation and reorganization of the Los Angeles Bank and its merger into the Portland Bank had been discussed by John H. Fahey, Federal Home Loan Bank Commissioner, Col. Harold Lee, Governor of the Federal Home Loan Bank System, himself and members of the staff of the Federal Home Loan Bank Administration for some time prior to March 29, 1946. It was effected on March 29, 1946, because of [251] the disagreement between the board of directors of the Los Angeles Bank and Commissioner Fahey as to the election of officers of the Los Angeles Bank. Commissioner Fahey had been faced with several alternatives as to what he could do in view of such controversy. One, he could remove the directors of the Los Angeles Bank, but they (Mr. Fahey, Col. Lee, Mr. Keller and members of the Federal Home Loan Bank Administration staff) believed that the stockholders of the Los Angeles Bank would either elect the same directors or others who would vote the same way as those who had been removed, and therefore removal of the directors would accomplish nothing. Two, the Commissioner could place a conservator in charge of the bank but he (the Commissioner) thought that eventually he would be forced to return the bank to the same directors so that the placing of a conservator in charge of the bank would accomplish

Petitioners' Exhibit No. 2-27-50-4—(Continued)  
nothing. The only other alternative, therefore, was to merge the Los Angeles Bank with the Portland Bank, and that is what the Commissioner did.

Said Keller further stated at said meeting, in substance and effect as follows: Under normal conditions if there were to be a merger of the Los Angeles and Portland Banks, the Portland Bank would have been merged into the Los Angeles Bank, the larger of the two, but that under the circumstances of the controversy with the board of directors of the Los Angeles Bank, the Commissioner chose to merge the Los Angeles [252] Bank into the smaller Portland Bank.

The Federal Home Loan Bank Administration did not hold a hearing on the proposed merger of the Los Angeles Bank into the Portland Bank because the Administration knew that the Los Angeles Bank stockholders would oppose it, and perhaps block it by legal action or by protests in sufficient number as to make it impossible for the Administration to accomplish it and that was the reason for the manner in which the merger was effected.

On June 12, 1946, affiant was present at the hearing, before the Special Committee to Investigate Executive Agencies of the House of Representatives of the 79th Congress, of the complaints of the Los Angeles Bank and Long Beach Federal Savings and Loan Association against the Federal Home Loan Bank Administration. Affiant heard the testimony

Petitioners' Exhibit No. 2-27-50-4—(Continued)  
given under oath by Harland G. Keller on June 12, 1946, at said hearing.

Said Keller then and there testified under oath, in substance and effect, as follows:

He was an Assistant Governor of the Federal Home Loan Bank System and had been such for about four and one-half years. John H. Fahey was the Federal Home Loan Bank Commissioner. Under the Commissioner was the Governor of the Federal Home Loan Bank System who was Col. Harold Lee, and under the Governor of the Federal Home Loan Bank System there were [253] three Assistant Governors and he was one of those three Assistant Governors.

He had been instructed by Col. Lee, Governor of the Federal Home Loan Bank System, to go to San Francisco to make arrangements for space necessary to house the Federal Home Loan Bank of San Francisco and also to make arrangements for telephone and other things that were necessary, and then to go to Portland, Oregon, to handle the details of the consolidation of the Los Angeles Bank and the Portland Bank. He left Washington, D. C., at 9:45 o'clock on the night of March 25, 1946.

He did not know who conceived of the organization of the Federal Home Loan Bank of San Francisco but he imagined that Mr. Fahey knows. There had been many discussions of the possibility of a Federal Home Loan Bank of San Francisco over a period of time before he had received instructions to proceed to San Francisco and arrange for the



Petitioners' Exhibit No. 2-27-50-4—(Continued)  
housing of such a bank. He participated in such discussions with Mr. Fahey, Col. Lee and other members of the staff.

Officials of the Portland Bank were not informed of those instructions at that time; they were informed of them on the 27th and 28th of March, 1946.

He did not advise anybody in Los Angeles of that move. The Federal Home Loan Bank Administration considered the possibility that the Los Angeles Bank and its stockholders [254] might undertake to block such a move on the part of the Administration by litigation.

There had been discussions of many steps that the desperate group in Los Angeles, made up of several people attempting to control the Los Angeles Bank, might take. He considered he was discharging whatever obligation he had to the stockholders of the Los Angeles Bank in proceeding secretly under explicit instructions.

He addressed a meeting of the Northern Counties Savings and Loan Group of California after the merger of the banks was accomplished. He had been asked if he would appear at such meeting to present the Administration's side of this controversy because they had up to that time been favored with a one-sided story and he consented to appear.

He was asked by Mr. Fischbach, counsel for the Special Committee conducting said hearing, if he had been present while various statements were

Petitioners' Exhibit No. 2-27-50-4—(Continued)  
made by witnesses which they attributed to him as having been made at said meeting.

The following questions were then asked of said Keller and were answered by him as follows:

Mr. Fischbach: Now, were the statements that were attributed by the various witnesses that you heard testify, to you, correct?

Mr. Keller: The statements of Mr. Gregory which he attributed to me, if I can remember them correctly, were [255] somewhat distorted.

Mr. Fischbach: Now, let's have your version of it.

Mr. Keller: I believe he said that I, in outlining the three possible approaches in connection with the dismissal of the directors, that I said that the same directors would be put back in. What I actually said was that we had no evidence that the leadership would change, and therefore would have no evidence that a new board would achieve anything.

I believe he said that a court would order the conservator to return the bank to the board. If I remember correctly, I stated that if a conservator was placed in there, in the course of time, it would have to be turned back to a California board, and again we would have no assurance that that board would have a different viewpoint or a different attitude than the present one.

Mr. Jennings (a member of the Committee): There is not much difference between what you said

Petitioners' Exhibit No. 2-27-50-4—(Continued)  
and what he said. The difference between tweedledum and tweedledee.

Said Keller further testified under oath at said hearing, in substance and effect, as follows:

There was no question of the solvency of the Los Angeles Bank, and there was no question of dishonesty or dereliction of duty, or improvidence in the management of the Los Angeles Bank. [256]

The following statements are made by affiant for the purpose of countering the statements in, and the inferences intended to be drawn from, the exhibits attached to the affidavit of Ernest E. Reardon attached to said memorandum in opposition to motions for orders directing payment of attorneys' fees on account and repayment of moneys advanced, filed herein by the Home Loan Bank Board, et al., on September 23, 1949.

The following set forth table, showing the surplus and undivided profits of the Federal Home Loan Bank of Portland, was prepared by affiant from figures shown in the statements of condition of that bank in its Year Books for the years 1939, 1940, 1941, 1942, 1944 and 1945, published by said bank and distributed by it to its members and to the public, and from the statement of condition of said bank, as of March 29, 1946, furnished affiant by said purported Federal Home Loan Bank of San Francisco, hereinafter referred to as the San Francisco Bank:

Petitioners' Exhibit No. 2-27-50-4—(Continued)

Comparative Table of Surplus and Undivided Profits of  
the Federal Home Loan Bank of Portland

Date	Surplus and Undivided Profits	Increase	Per Cent Increase
Dec. 31, 1939.....	\$447,879.33		
Dec. 31, 1940.....	497,746.41	\$ 49,867.67	11.13
Dec. 31, 1949.....	617,935.73	120,189.32	24.15
Dec. 31, 1942.....	650,393.37	32,457.64	5.25
Dec. 31, 1943.....	717,084.70	66,691.33	10.25
Dec. 31, 1944.....	760,995.04	43,910.34	6.12
Mar. 29, 1946.....	926,977.48	165,982.44	21.81
		<hr/> \$479,098.15	106.97

As shown in the foregoing table, the surplus and undivided profits of the Portland Bank increased nearly 107% in [257] the six years and three months preceding the seizure of the Los Angeles Bank and its merger into the Portland Bank.

Subject to the conditions therein set forth, Sec. 6(g) of the Federal Home Loan Bank Act (12 USC 1646 (g)) provides for the retirement at par of capital stock of the Federal Home Loan Banks held by the United States.

The surplus and undivided profits of the Los Angeles Bank on March 29, 1946, amounted to \$1,941,330.49, as shown in a statement of condition of said bank furnished affiant by said San Francisco Bank. As shown by said statement, the Reconstruction Finance Corporation held on March 29, 1946, 99,679 shares of stock of the Los Angeles Bank of the par value of \$9,967,900.00. The members of said bank held 59,750 shares of the par value of \$5,971,500.00. The total number of shares of stock of said



Petitioners' Exhibit No. 2-27-50-4—(Continued)  
bank outstanding on March 29, 1946, was 115,394 of the par value of \$15,939,400.00.

The book value per share of all outstanding stock of the Los Angeles Bank, including that of the Reconstruction Finance Corporation and of members (capital, surplus and undivided profits divided by the total number of shares outstanding) was \$112.18. The book value of the interest of each share in the surplus and undivided profits alone (surplus and undivided profits divided by the total number of shares outstanding) was \$12.18. The book value per share of the members' interest in the surplus and undivided profits alone [258] (surplus and undivided profits divided by the total number of members' shares outstanding) was \$32.51.

If the shares held by the Reconstruction Finance Corporation in the Los Angeles Bank on March 29, 1946, were retired at par, the book value of each share of stock held by the members (surplus and undivided profits divided by the total number of members' shares outstanding plus par value of such shares) would be \$132.51.

As shown by the statement of condition of the Portland Bank on March 29, 1946, the Reconstruction Finance Corporation held 59,600 shares of its stock of the par value of \$5,960,000.00. The members held 21,724 shares of the par value of \$2,172,400.00. The total number of shares outstanding was 81,324 of the par value of \$8,132,400.00.

The book value per share of all outstanding stock of the Portland Bank, including that of the Recon-

Petitioners' Exhibit No. 2-27-50-4—(Continued)

struction Finance Corporation and of members (capital, surplus and undivided profits divided by the total number of shares outstanding) was \$111.40. The book value of the interest of each share in the surplus and undivided profits alone (surplus and undivided profits divided by the total number of shares outstanding) was \$11.40. The book value per share of the members' interest in the surplus and undivided profits alone (surplus and undivided profits divided by the total number of members' shares outstanding plus the par value of such shares) would [259] be \$142.67.

The following table shows the book value of each share of the outstanding stock of the Los Angeles Bank and of the Portland Bank on March 29, 1946:

	Los Angeles Bank	Portland Bank
Book Value of Each Share.....	112.18	111.40

The following table shows the book value of each share of the stock of the Los Angeles Bank and of the Portland Bank on March 29, 1946, if the Reconstruction Finance Corporation stock in each bank were retired at par:

	Los Angeles Bank	Portland Bank
Book Value of Each Share.....	132.51	142.67

The greater book value of the members' stock of the Portland Bank, if the stock held by the Reconstruction Finance Corporation in that bank were retired at par, over the book value of the members' stock of the Los Angeles Bank, is due to the greater

Petitioners' Exhibit No. 2-27-50-4—(Continued)  
 proportion of Reconstruction Finance Corporation  
 stock held by the Portland Bank as shown below:

	Los Angeles Bank	Portland Bank
Per Cent of RFC Capital to		
Total Capital.....	62.5	73

/s/ RICHARD FITZ PATRICK.

Subscribed and sworn to before me this 5th day of  
 January, 1950.

/s/ CHARLES E. TAINTOR,  
 Notary Public in and for Said  
 County and State. [260]

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The Court: Now, what do you want to do about  
 your affidavits of service here? There was an order  
 directing a rather wide service. There is an affidavit  
 of service and an affidavit of publication.

Mr. Works: Your Honor is referring to the  
 notice of this hearing today?

The Court: That is correct.

Mr. Works: That should be in the record, by all  
 means.

The Court: Do you offer it?

Mr. Works: I certainly do.

The Court: What exhibit number?

The Clerk: No. 5, your Honor.

The Court: Very well.

Mr. Works: There should be at least two affi-  
 davits of publication.

The Court: There are two affidavits of publica-

tion and there is this long order here of service by mail. I do not find an affidavit of service on that, but the affidavit of publication filed by M. E. Kogler, Los Angeles Daily Journal and the Los Angeles News—it does not seem to have any page number in this record—dated the 6th of February, 1950, and filed February 7, 1950. That will be Exhibit 2-27-50-5, and the affidavit of publication of W. H. Kaplan, verified the 10th of February, 1950, by Mr. M. J. Levy, notary public, and filed February 13, 1950, in this court concerning publication [261] in the Daily Journal of Commerce, State of Oregon, County of Multnomah, will be in evidence as Exhibit 2-27-50-6.

(The documents referred to were received in evidence as Petitioners' Exhibit Nos. 2-27-50-5 and 2-27-50-6.)

The Court: Was there an affidavit of mailing filed?

Mr. Whyte: Both an affidavit of mailing filed and also an affidavit as to publication in the San Francisco Recorder, your Honor.

Mr. Works: How about Portland?

Mr. Whyte: He just read Portland.

The Court: This is Portland.

Is it in that file?

Mr. Whyte: I believe it is, your Honor.

The Court: These two affidavits of service need not be copied into the record, that is, the affidavit of publication.

Mr. Whyte: The affidavit of service by mail of



notice to this hearing upon all of the associations which were designated in the Exhibit A attached to the order.

The Court: That is the order filed January 31, 1950, containing a list 20 pages in length?

Mr. Whyte: That is correct, your Honor.

The Court: And the affidavit of service conforms with that order for mailing?

Mr. Whyte: That is true, your Honor.

The Court: It is the affidavit of whom? [262]

Mr. Whyte: That is the affidavit of Adrian Adams.

The Court: Dated or sworn to when?

Mr. Whyte: Sworn to on February 1, 1950.

The Court: Filed?

Mr. Whyte: Filed on the same date.

The Court: That will be Petitioner's Exhibit 2-27-50-7 and not be copied into the record.

(The document referred to was received in evidence as Petitioner O'Melveny & Myers and FitzPatrick Exhibit No. 2-27-50-7.)

Mr. Whyte: May I check just one moment, your Honor?

The Court: The other was an affidavit of service by mail.

Mr. Whyte: Your Honor, that affidavit of Adrian Adams was filed February 10, 1950.

The Court: Was that publication or service by mail?

Mr. Whyte: Service by mail upon the savings and loan associations.

The Court: Now the affidavit of publication in the San Francisco Recorder is when?

Mr. Whyte: I have not yet been able to locate that.

The Court: Let us look for it now while we are at it.

Mr. Works: Did your Honor make any direction with reference to the affidavit of mailing to the various associations?

The Court: I just made that. It is No. 6 and No. 7 is the last one. It is not to be incorporated in the transcript. [263] It will be admitted in evidence—or do you wish it incorporated in the transcript?

Mr. Works: I believe perhaps we should.

The Court: Very well. What exhibit number did I give it?

The Clerk: No. 7.

The Court: What pages in the record, so the reporter can find it when he comes to it?

Mr. Whyte: I don't see any.

The Court: He has not gotten to it yet. Very well. Let us see.

(The file referred to was passed to the court.)

The Court: This is not any portion of the record on appeal and has therefore not been numbered. This was 2-27-50-7, the affidavit of service by mail, Mr. Clerk?

The Clerk: That is right, filed on February 10th.

The Court: Filed February 10, 1950. And the affidavit of C. H. Lacassa, verified the 9th of

February, 1950, before Russell L. Thompson, showing service by publication in the San Francisco Recorder will be 2-27-50-8 and need not be copied, Mr. Works? The affidavit of service need not be copied in the transcript. It is in evidence as Exhibit 8. There are three affidavits of service by publication and I have not ordered them copied in the transcript.

Mr. Works: I don't think it is necessary, your Honor. [264] If they are in evidence they will be in the record in one form or another, I guess.

The Court: I think that is sufficient.

(The document referred to was received in evidence as Petitioner O'Melveny & Myers and FitzPatrick Exhibit No. 2-27-50-8.)

Mr. Gilbert: Your Honor, I just suggested to counsel, and submit it for what it may be worth, that with respect to these petitions for attorneys' fees that are covered by stipulation, that publication and service was duly made and ordered by the court. That will save the record that much and save looking for it through the record for those items.

Is that agreeable, Mr. Angell?

Mr. Angell: That is agreeable to counsel for the San Francisco Bank.

The Court: We have finished on the petition of Mr. Works.

Mr. Works: I would like to have such a stipulation in any event as far as the parties represented

here today are concerned. It will eliminate any question as far as we are concerned.

The Court: Is it so stipulated?

Mr. MacGuineas: There is a difficulty as far as the official defendants are concerned, your Honor, because we are asserting the position throughout that none——

The Court: Then it is not so stipulated. Let us get [265] on.

Mr. Works: Do you care to stipulate reserving all your rights under those defenses? That is all right with us.

Mr. MacGuineas: I am not sure what the effect of that would be.

Mr. Works: We will make it as painless as possible.

The Court: There does not appear to be any stipulation. Very well.

Now is there anything more in connection with the petition for attorneys' fees of O'Melveny & Myers and FitzPatrick?

Mr. Chapman: Yes, your Honor, there is for me.

The Court: I mean by way of evidence.

Mr. Chapman: That is what I am speaking of.

The Court: Very well.

Mr. Chapman: I ask leave to file a counter-affidavit. I have only had opportunity to read the San Francisco Bank's opposition which was served on me at 1:55 o'clock p.m. today, just before the start of the hearing, and in the exhibit there is a statement that the Long Beach Federal Savings and Loan Association exchanged 3417 shares of



stock of the Los Angeles Bank for stock of the San Francisco Bank. That statement is factually incorrect, and I ask leave to file an affidavit to show what the facts are.

There are other matters in that also that we would like to answer by counter-affidavit. I will have them filed tomorrow [266] morning when court opens.

Mr. Bishop: That is like the opposition, or alleged opposition, you filed today, and we reserve the same privilege, Mr. Chapman.

Mr. Chapman: If you want to file something by tomorrow morning, that is agreeable with me.

Mr. Bishop: I would move to strike it if I had my wishes about the matter, as scurrilous, not responsive and not a true and correct statement of the facts.

The Court: I do not know what you are talking about.

Mr. Bishop: We are having one of those usual—pardon me.

The Court: Except then for the permission, which is now granted to the Long Beach Federal Savings and Loan Association, to file counter-affidavits to the affidavits which were filed by the Federal Home Loan Bank today, that is, the affidavit of Bogardus—

Mr. Chapman: And the Frank Noon affidavit.

The Court: —and the affidavit of Frank Noon, permission to file which counter-affidavit is granted until tomorrow morning at 12:00 o'clock noon.

Mr. Bishop: Have we the same privilege, your

Honor, in connection with Mr. Chapman's response to the First Federal's application that he served and filed today that we did not see until after 2:00 o'clock? [267]

Mr. Chapman: I served it at the same time you served yours, Mr. Bishop.

Mr. Bishop: But yours is 15 times longer.

The Court: This is not a verified affidavit.

Mr. Chapman: We didn't make any affidavits, merely a response.

The Court: It is merely a response.

Mr. Bishop: We would ask leave to file counter-affidavits to that response because it contains many statements of fact that are not correct.

Mr. Works: Mr. Bishop, was any of the material filed by you today intended to be used as opposition to our application?

Mr. Bishop: Yes, both affidavits.

Mr. Works: I see. There are some statements made in the material filed by the San Francisco Bank today with reference to several of the associations named in Case No. 5678——

The Court: I will settle it this way: With relation to the papers that were filed after the commencement and opening of court this afternoon, to wit, the response of plaintiffs Mallonee, et al., and third-party plaintiff and cross-claimant Long Beach Federal Savings and Loan Association to all applications re attorneys' fees, the answer in opposition to the Federal Home Loan Bank of San Francisco to the motion and order of the First Federal Savings and Loan Association of [268] Wil-

mington, dated February 10, 1950, and the affidavit of Irving Bogardus, all parties desiring to file any responsive affidavits thereto may have until 12:00 o'clock noon tomorrow to do so.

Mr. Works: We have to contact these associations, your Honor, and we would appreciate a little more time. The general purport of this is that they have been doing business with the San Francisco Bank and then the theory of estoppel is attempted to be set forth, I assume.

The Court: When can you get that information?

Mr. Works: I will defer to Mr. FitzPatrick on that. He is closer to the situation than I am.

Mr. Fitzpatrick: Some of these associations are in Alameda, another one of them is in Stockton, others are local, that is, in Los Angeles County.

The Court: Do you propose to communicate with the entire list set forth in Mr. Bogardus' affidavit?

Mr. FitzPatrick: I think it would be necessary to do so, your Honor, unless we make an indefinite allegation in our response.

Mr. Gilbert: Perhaps it would shorten it if Mr. Angell would produce——

Mr. FitzPatrick: Maybe we can do it by telephone.

The Court: As I read this affidavit, it sets forth in this list the name of the association by state, by city, the [269] stock held on 3-29-46, the date of seizure or date of creation or date of dissolution, whatever you call it, and the stock held 2-21-50, and the date of stock exchanged. I take it where there

is no date under that column there has been no exchange?

Mr. Bishop: That is correct.

Mr. Angell: That is correct.

The Court: Therefore to verify this it would be necessary for you to communicate only to those having listed in the column where date of stock exchanged is shown, which seems to me could be done by telegraph tonight—there are probably about 125 of these—and a telegram could be back here by the following day, Wednesday, so that I will extend the time of the application on O'Melveny & Myers and FitzPatrick to file their response to the affidavit of Mr. Bogardus until 5:00 o'clock Wednesday.

Mr. Works: That is fine. May that include the matter set forth in Mr. Noon's affidavit?

The Court: As well as the matter set forth in Mr. Noon's affidavit.

Mr. Works: That is fine. Thank you.

The Court: The time to file any response by the Long Beach Association, or the Mallonee Shareholders Committee and by the San Francisco Bank to their document designated response, if any is desired to be filed, will expire 12:00 [270] noon tomorrow.

Mr. Bishop: You mean as to Long Beach?

The Court: As to yours too. You will get until 12:00 o'clock noon tomorrow to file anything you want in response or in opposition to the response of the Long Beach and Mallonee response, and they have until 12:00 o'clock noon to file any affidavits



they desire in opposition to the affidavits of Bogardus and Noon. And the petitioners who will have to communicate with all of these people will have until 5:00 o'clock Wednesday, that is, O'Melveny & Myers and FitzPatrick.

Mr. Gilbert: Your Honor, I think the things sought have to do with letters of protest written to the San Francisco Bank protesting the doing of business with the San Francisco Bank after the Los Angeles seizure. I wonder if it might be easier for the San Francisco Bank, having those all together, perhaps Mr. Angell would phone up there and ask that they be sent down so that we might have those protests in court. That would be the best evidence.

Mr. Angell: We will produce anything that we can, and we will be glad to telephone and find out, if you will tell us just exactly what you want.

The Court: What difference does a protest make?

Mr. Gilbert: They are setting up here—I may be wrong—that by reason of doing business with them we have no [271] complaints to make.

The Court: The theory of estoppel?

Mr. Gilbert: Yes.

The Court: Can you find that out by tomorrow morning?

Mr. Angell: We will be pleased to, your Honor, if they will tell us just what they want.

The Court: They want all protests against the seizure and dissolution of the Los Angeles Bank, the transfer of the assets to the San Francisco Bank,

to the Portland Bank and the creation of the San Francisco Bank.

Mr. Gilbert: One other thing—and a protest and doing business under compulsion with the San Francisco Bank. That was likewise protested.

The Court: Then really what you want is the protest after the establishment of the San Francisco Bank and doing business with the San Francisco Bank?

Mr. Gilbert: That is correct.

Mr. Fussell: In the nature of a protest and reservation of rights to continue the protest notwithstanding the doing of business. I think that that perhaps is as accurate a description as we could give.

Mr. Bishop: As I understand it, Mr. Fussell——

The Court: You are now making a demand for those?

Mr. Gilbert: I do; yes.

The Court: A demand for the production of documents? [272]

Mr. Gilbert: Yes.

Mr. Works: Yes.

The Court: Who is?

Mr. Gilbert: I do, your Honor.

The Court: The First Federal of Wilmington?

Mr. Gilbert: The First Federal of Wilmington; yes, your Honor.

The Court: And the plaintiffs in Case No. 5678, now consolidated with Case No. 5421?

Mr. Works: Yes, your Honor.

The Court: And O'Melveny & Myers and Fitz-Patrick?

Mr. Works: That is correct, your Honor.

Mr. Angell: If you are demanding them you will have to demand them legally from San Francisco. That is where they are.

The Court: You are in court. The San Francisco Bank is here.

Mr. Angell: We are here, but the custodian of those records isn't here.

The Court: Your client is subject to the order of this court as long as you are here. Counsel is demanding the inspection of those documents.

Mr. Angell: He may have them, your Honor, but——

The Court: If he has not got them he cannot inspect them, but he is demanding them now and I am going to order [273] you to produce them if you have them.

Mr. Angell: If your Honor please, it is now 4:40, pretty nearly 4:45, and the San Francisco Bank is closed. We will not be able to communicate with the San Francisco Bank or with anyone in the office until it opens in the morning, which I think is 9:00 o'clock. Is that right?

Mr. Dusenbery: 9:30.

Mr. Angell: 9:30.

Mr. Gilbert: They will be here by Wednesday?

Mr. Angell: As soon as we can get in touch with Mr. Bogardus.

The Court: I did not order you to produce them tonight.

Mr. Angell: No, I just wanted to make sure we would have time to get in touch with them.

The Court: Surely.

Mr. Bishop: I wish to call the court's attention——

The Court: Let us fix the time. Let me put it this way, Mr. Angell: If you will advise us by tomorrow noon what is available then I will fix the time.

Mr. Angell: We will endeavor to do it even before that. What we want to make clear is what protest do you want.

Mr. Works: All of them, because that is a virtual representation of all of the associations.

The Court: All associations listed in the affidavit of Bogardus. [274]

Mr. Bishop: That is my point. All of them didn't do it.

The Court: Whoever did.

Mr. Angell: It is only the ones that did?

Mr. Works: Only the ones that you have.

Mr. Angell: Mr. Dusenbery tells me—I am not familiar with these records—Mr. Dusenbery calls to my attention that it may be that petitions are filed in the individual files and there will have to be a search made in each file. We will produce them as rapidly as that can be done, if that is required, but we will let you know either by noon or before what the physical situation is.

The Court: What the situation is?

Mr. Angell: Yes.

The Court: Very well.



Mr. Gilbert: May I ask if you will also ascertain with respect to what is available and demand of the San Francisco Bank with respect to the transfers or the Los Angeles Bank or the Portland Bank with respect to the transfers of the stock? I understand certain letters were written in that regard also.

Mr. Bishop: I never saw them.

Mr. Angell: If there is, I don't know anything about it.

Mr. Gilbert: Will you inquire?

The Court: You are only interested in letters either of protest or reservation of right?

Mr. Gilbert: As well as the letter, if there was one. [275]

The Court: In connection with the transfer of stock?

Mr. Gilbert: In connection with the transfer of stock.

The Court: And in connection with doing business?

Mr. Gilbert: That is right, your Honor.

The Court: I think that is simple and clear.

Now have you any more evidence?

Mr. Chapman: One more point, your Honor. Did I understand you correctly to say that File No. 5678 is not part of the record on appeal? I thought I heard you say that.

The Court: It is part of the record on appeal and it is numbered.

Mr. Chapman: 5678?

The Court: No. 5678 has page numbering in it,

but the documents as they are flowing into the files, once in a while gets into 5678 and the rest of them get into 5421, so I had Mr. Stacey provide me all of the files in 5678 Saturday and various other ones here so that I would have the advantage of reading all the documents.

Now except for the counter-affidavits, does that conclude the evidence on all sides with relation to the application of O'Melveny & Myers and Fitz-Patrick for fees?

Mr. Works: We rest, your Honor.

The Court: When these affidavits come in?

Mr. Works: Yes, subject to that.

The Court: Except for the counter-affidavits?

Mr. Angel: We rest. [276]

\* \* \*

HUGH W. DARLING

Cross-Examination

By Mr. Chapman: [337]

\* \* \*

Q. Assume that the future corporate existence of the [338] attorney's client might depend upon the outcome of this litigation, would that fact make any difference in your opinion of the value?

The Court: Of this litigation or this application for fees, which?

Mr. Chapman: The litigation is the first question, your Honor.

The Court: Very well.

The Witness: Yes, if I understand your ques-

(Testimony of Hugh W. Darling.)

tion, and that is a factor that I did consider because I assumed from the contents of the affidavit that Mr. Gilbert's client, as a corporate entity, might be in jeopardy. [339]

\* \* \*

### TRACY SKELTON

called as a witness by and on behalf of the petitioner Gilbert having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name? [344]

The Witness: Tracy Skelton.

### Direct Examination

By Mr. Gilbert:

Q. Mr. Skelton, in 1946 were you an officer of the First Federal Savings and Loan Company?

A. I was.

Q. What position did you hold? What office did you hold at that time? A. President.

Q. Just to focus your attention to a date, do you recall the occasion of the seizure of the Los Angeles Bank? A. I do.

Q. With respect to that date, will you state whether or not some time thereafter your association was examined for purposes of ascertaining whether or not your association had appropriated a contribution for purposes of a fund to legally protest the seizure of the bank?

Mr. MacGuineas: Your Honor, I should like to inquire——

(Testimony of Tracy Skelton.)

The Court: It is complex, compound and confusing.

Mr. Gilbert: I withdraw it.

Q. Sometime approximately in June of 1946 did examiners present themselves at your institution to examine the records? A. Yes.

Q. And do you recall who it was?

A. I do not. [345]

Q. They identified themselves to you at the time, did they? A. They did.

Q. As what?

A. Examiners making a spot check.

Q. Did they state to you what they were spot checking for? A. They did not.

Q. Did they examine any of your books?

A. Yes.

Q. What did they examine?

A. Particularly the minute book and the expense account.

Q. Did they ask you any questions in connection with it? A. None to speak of.

The Court: Did you ask them any?

The Witness: I was given to understand——

Mr. Angell: Just a minute, your Honor. This man says he didn't even know the names of who was there. If we are to be bound by any such testimony we would like the time, place, who was present, what was said. We object to it.

The Court: Did you ask them any questions?

The Witness: I asked them what they were there for.



(Testimony of Tracy Skelton.)

The Court: You asked them questions? [346]

The Witness: Yes.

The Court: Did they give you an answer?

The Witness: No.

The Court: Who was present when you asked them this question?

The Witness: The secretary of the association, Mr. Bertram, was there.

The Court: Mr. Bertram?

The Witness: Yes.

The Court: What did they say?

The Witness: Well, they were very evasive.

The Court: That may be stricken as a conclusion.

What did they say? The idea is trying to rebuild a picture of what happened.

The Witness: We couldn't find out what they were there for.

The Court: Did they say anything?

The Witness: Very little. They wanted to look at our minute book and our expense account.

The Court: When you asked them what they were there for, didn't they say anything?

The Witness: They said they wouldn't tell us what they were there for.

Mr. Angell: I think that answers the question. [347]

Q. (By Mr. Gilbert): Did you receive a bill for that examination? A. We did not.

Q. Did you have another conversation on December 10th of last year with some examiners?

A. Yes.

(Testimony of Tracy Skelton.)

Q. Who were they?

A. A man by the name of Turner was the chief examiner, and I have forgotten the junior examiner's name.

Q. Where did this conversation take place?

A. Over a cup of coffee in a cafe.

Q. Who, if anyone, was present besides yourself and the other gentlemen?

A. Mr. Bertram was with us.

Q. Did you have a conversation with them respecting any charges or what you were doing in connection with attorney fees? Just answer that yes or no. A. Yes.

Q. Will you relate what was said at that time?

A. Mr. Turner, after several minutes over a cup of coffee, said, "We have been trying to get up nerve enough to ask you a question all week." This was on Friday, after they came in on Monday.

And I said, "Well, for God's sake, if you got a question to ask, ask it and if it is right I will answer it; if it [348] isn't, I won't."

And he turned to the junior examiner and he said, "You ask him."

The junior examiner said, "No, you ask him. You are the chief examiner."

So he said, "We have gone through your expense accounts and we don't find any charges for attorney fees."

I said, "That is right."

"Well, you have an attorney, don't you?"

I said, "That is right."

(Testimony of Tracy Skelton.)

"You expect to pay him, don't you?"

I said, "No."

He said, "How is he going to be paid?"

I said, "He will apply to the court for his fees and that is the agreement we have with him."

Q. Was there anything said in that conversation about whether or not they had been sent down there to ascertain that fact?           A. No, sir.

Mr. Gilbert: Cross-examine.

### Cross-Examination

By Mr. MacQuineas:

Q. Mr. Skelton, I take it that you have had conversations with a good many examiners of the Home Loan Bank Board during the time that you have been an officer of the Wilmington [349] Federal, is that correct?           A. That is correct.

Q. And has it not been the general practice of such examiners to inquire of you whether or not you had, at the time of their examination, any outstanding liabilities, contingent or otherwise?

A. That is right.

Mr. MacQuineas: That is all.

The Court: Did any of them ever take you to a cafe for a cup of coffee and ask about attorney fees before?

The Witness: No, they never did.

Q. (By Mr. MacGuineas): Did you take them or did they take you?

A. I think I paid most of the bills.

Mr. Gilbert: That is all.

(Witness excused.)

Mr. Gilbert: Your Honor, Mr. Belcher is back now.

The Court: Very well.

FRANK B. BELCHER

resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Chapman:

Q. Mr. Belcher, you have read the report of the investigating committee previously referred to?

A. Hurriedly. [350]

Q. Would the matters therein referred to in any way affect your estimate of the value of attorneys' fees?

A. No, I don't believe so because I had assumed from the matters which were set up in the petition and in Mr. Gilbert's affidavit that this was a very novel type of litigation. That was quite apparent. And I had that in consideration and in mind when I expressed the opinion which I did a while ago, taking into consideration also the fact which I want to lay some emphasis on, that this is merely, as I understand it, an interim allowance on account of attorneys' fees.

Mr. Chapman: That is all the questions I have.

The Court: You may step down and be excused.

Mr. Westover: Pardon me, Mr. Belcher. Just one question.



(Testimony of Frank B. Belcher.)

Cross-Examination

By Mr. Westover:

Q. Mr. Belcher, I think you mentioned the fact that you had estimated these on the basis of \$50 per hour? A. Roughly that.

Q. Approximately that? A. Yes.

Q. In using that figure, was that what is commonly known as a base pay figure per hour or would that be like an overtime, time and a half or a double time figure per hour, [351] to use the terminology of unions, etc.?

A. Are you speaking generally now?

Q. I am speaking as to your use of the rate of \$50 per hour. Was that a base pay rate?

A. Well, I think that that is popularly regarded as a base pay rate of counsel of standing in matters of importance.

The Court: That is, assuming that he works regular hours at his office?

The Witness: Yes, sir.

The Court: Or in court?

The Witness: Yes, your Honor.

Q. (By Mr. Westover): Then if such hours as were worked, we will say, in the middle of the night and under court order or on Saturdays or Sundays or other unusual hours, would you feel that you were justified in increasing or decreasing that rate per hour?

A. Well, taking that just as an isolated consider-

(Testimony of Frank B. Belcher.)

ation, it would involve some increase in the value that you would normally place on services.

However, in this matter, if I may make one further observation, one of the important elements in fixing attorneys' fees is lacking in this case, that is, the end result, and therefore as I view this matter you have to take it more or less on a time basis, the nature of the litigation and the forum in which it is being conducted. [352]

The Court: Well, for instance, did you take into consideration the fact that on Armistice Day, beginning at 9:00 o'clock in the morning and continuing until midnight and after on that day, counsel in this case were in consultation with the court in the drafting of an order with the clerk and the reporter present?

The Witness: I took into consideration that there was a meeting of that kind. I had not noted, however, if it was on Armistice Day.

The Court: And many Saturdays and many, many nights after hours during the time that other cases were tried in court, and we would meet in connection with orders or ex parte matters in connection with this case.

The Witness: I noted that there were a number of night meetings; yes, sir.

Mr. Westover: That is all.

The Court: By the way, Mr. Belcher, Mr. Stacey, the clerk, has brought in the files in this case. They are now on the table. In fixing your fee did you take into consideration the fact that Mr. Gilbert

(Testimony of Frank B. Belcher.)

was brought into this case in August 1949 and that the case had been pending since May 27, 1946, and that all except, I think, about two volumes of those files which number now in excess of 13,000 pages, had accumulated prior to that date, which involved approximately 100 hearings in court, and that he would have to familiarize [353] himself with what had occurred prior to the time of his association in the case?

The Witness: I noted that he had been brought into the matter approximately 24 weeks ago. I did not have in mind that the files were nearly as voluminous as those I now see.

The Court: There are how many volumes, Mr. Clerk?

The Clerk: 37.

The Witness: I had no idea that your files were that voluminous; no, sir.

The Court: The transcript is not here, neither are the exhibits.

Further questions?

Mr. Westover: No further questions.

Mr. Angell: No.

Mr. Bishop: Could I ask Mr. Belcher a question off the record?

The Court: No, on the record. You can after court is adjourned.

Very well. Step down.

(Witness excused.)

The Court: The other witness, Mr. Darling, is still reading the report.

By the way, Mr. Clerk, while you were absent Mr. Hugh W. Darling was sworn as a witness by the court and testified on direct and cross. [354]

The Clerk: Yes, your Honor.

Mr. Gilbert: Mr. Bishop.

The Court: To the witness stand?

Mr. Gilbert: Yes, your Honor.

Here comes Mr. Darling. Perhaps with your Honor's indulgence we might finish with him.

The Court: You may resume the stand.

### HUGH W. DARLING

resumed the stand and testified further as follows:

#### Cross-Examination

(Continued)

By Mr. Chapman:

Q. Mr. Darling, have you now read the report?

A. Let me explain it. I read it hastily, I did not read all of the footnotes and some of the legal cases that were quoted. One of them, Jones vs. SEC, I am entirely familiar with, so I did not read that and I did not read the appendix.

Q. Taking into consideration that report and the matters therein disclosed, does that in any way affect your previous estimate of the valuation of services of Mr. Gilbert?

A. No, I read this report and from the information I gained from it, it only served to support my conclusion that this is an extremely complex piece of litigation.

Mr. Chapman: That is all.



(Testimony of Hugh W. Darling.)

The Court: You may be excused.

Mr. Westover: Pardon me. May I ask the same question [355] of Mr. Darling as I asked of Mr. Belcher?

The Court: Yes.

### Cross-Examination

By Mr. Westover:

Q. The figure you gave of \$50 per hour, I think you stated, was that in your opinion what is commonly known as a base pay rate or did you take into account in that overtime or double time or Saturdays and Sundays?

A. Well, I think I took into consideration all of the factors that appeared to exist from the affidavit that I read and in the hypothetical question.

I might say that at least in our office we do keep time records and time is always an element that is considered. I took into consideration the earning power of an attorney, or what should be the earning power of an attorney of Mr. Gilbert's caliber, the maximum possibility that he can realize, and on that computation I used six hours a day as a maximum pay day as distinguished, I think, from Mr. Morrow who used five hours—I think perhaps he is more accurate—and I extended that for a year. I figured that the very minimum of the gross return of an attorney for overhead would be one-third, and usually it is 40 per cent and often goes to 50 per cent, so I came out with a round figure of in the

(Testimony of Hugh W. Darling.)

neighborhood of \$45,000 or \$50,000 a year, and then figuring income taxes, it was my conclusion that if an attorney who is experienced and has a reputation for ability, if he cannot gross, or we will say net before taxes, in the neighborhood of \$40,000 or \$50,000 a year I think his time is not well spent.

Now perhaps I have rambled too far and didn't answer your question.

Q. I think you have given me a lead on it.

If a great deal of those hours were over and beyond the normal 6-hour day that you have used, would you think that those hours spent late at night or Saturdays or Sundays or at other times in excess of the 6-hour day that you have considered, would justify a higher or a lower hourly rate?

A. In my evaluation of this matter for the value of the services I did take into consideration that litigation of this nature properly discharged—and I know that Mr. Gilbert would discharge it properly—necessarily would entail a great deal of what we might call overtime work.

To answer your question again, I certainly do think that in any case which does necessitate undue overtime it must be considered and that factor appraised.

Q. In other words, there are hours spent in the middle of the night, in court hearings late at night, that would take a higher rate or a lower rate?

A. I should think so.

Q. It would take a higher rate?

A. Yes. [357]

Mr. Westover: That is all.

The Court: You may step down.

(Witness excused.)

Mr. Gilbert: Mr. Bishop.

### IRVING G. BISHOP

called as a witness by and on behalf of the petitioner Gilbert, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Gilbert:

Q. You are an attorney-at-law, Mr. Bishop?

A. Yes, sir.

Q. And you are representing and have represented the San Francisco Bank for some time in this litigation?

A. Yes, sir. I am one of counsel.

Q. You are one of counsel? A. Yes.

Q. One of three counsel? A. Yes.

Q. And you maintain your own office, do you?

A. Correct.

Q. The San Francisco Bank is one among other clients that you have?

A. That is correct.

Q. You have represented the San Francisco Bank in this [358] litigation now for how long approximately?

A. Well, roughly it will be four years in April.

Q. And for that period of time has the San

(Testimony of Irving G. Bishop.)

Francisco Bank compensated you for the services you have rendered to them in this litigation?

A. Yes, sir.

Q. And that has been, has it, by check of the San Francisco Bank? A. Yes, sir.

Mr. Gilbert: That is all.

The Court: Any other questions on this side of the table?

Mr. Works: Not a question, your Honor, but I would like to have the witness' testimony also tendered as a part of our application. You see, we rested a while ago except as to certain matters.

The Court: You now offer the witness as direct testimony as part of your case?

Mr. Works: I should like to reopen our case for that purpose, your Honor.

The Court: Very well.

Mr. Works: Thank you, your Honor.

The Court: Any further questions? (No response.)

Do you want to cross-examine yourself?

Mr. Bishop: Yes, I would like to ask one question. [359]

#### Cross-Examination

Mr. Bishop: No one asked me what the compensation was. I am quite confident that it is not on the basis of \$50 an hour or anywhere near that.

Q. (By Mr. Angell): What is it, Mr. Bishop?

A. It is seven divided into \$100 a day.

The Court: 7?



(Testimony of Irving G. Bishop.)

The Witness: A 7-hour day, for every 7 hours, \$100, or \$14 and some cents. I didn't pay that much attention to it.

Q. (By Mr. MacGuineas): Mr. Bishop, do you consider that fair and reasonable compensation for the nature of the services in this community?

Mr. Chapman: Just a moment.

Mr. Works: I will object to that as not proper cross-examination, if I may, your Honor.

The Court: No, it is not. Objection sustained.

Mr. Works: I believe there was an answer, your Honor, and I move that that be stricken.

The Court: It may be stricken.

The Witness: I didn't answer the question, but the opportunity was extended to me. I am rather tempted to qualify myself, if counsel want my opinion. I have been on derivative matters before, as your Honor is well aware of, [360] and I made an extensive search of every case that has been decided at that particular time in the state and——

Mr. Works: The objection was sustained.

The Court: He is asking himself a question now.

Mr. Works: What is the question then?

The Court: I think you had better get a question in the record.

The Witness: I was going to ask myself what my qualifications were so I was going to relate them first.

Mr. Works: We will object to that as not proper cross-examination.

The Court: It is not proper cross-examination.

(Testimony of Irving G. Bishop.)

They did not qualify you as an expert or call you as an expert.

Mr. Bishop: No, but I believe we have the opportunity, since I have been placed on the stand, to rebut that.

The Court: No. They called you as a witness and you are still under cross-examination.

Mr. MacGuineas: Can Mr. Bishop call himself as a witness?

The Court: At the appropriate time, not now.

The objections are sustained and the answers may be stricken.

Any further questions? [361]

#### Cross-Examination

By Mr. Chapman:

Q. Mr. Bishop, are you aware of any vote of the stockholders of either the San Francisco or the Los Angeles or the Portland Banks, or any one of the three of them, concerning use of the bank's money for attorneys' fees and expenses in this litigation? Now just answer yes or no first, please.

A. You are speaking of the shareholders?

Q. Stockholders, members, shareholders, whatever they may be.

A. You mean as distinguished from the board of directors?

Q. The stockholders or shareholders or members.

The Court: As distinguished from the board of directors?

(Testimony of Irving G. Bishop.)

Mr. Chapman: That is right.

The Witness: Not of my own knowledge; no, sir.

Q. (By Mr. Chapman): Have you any knowledge whether or not such a vote has been taken?

A. No, sir, none whatsoever.

Q. Have you any knowledge whether or not it is an admitted fact on your part as attorney for said bank in this action that such a vote has been taken?

The Court: Just a moment. I do not understand the question. [362]

Mr. Chapman: Let's take it over again.

Q. Have you not admitted in the conduct of this litigation, in your response to the order to show cause——

The Court: I have to decide what he has admitted in his response.

The Witness: I would like to——

The Court: Just a moment. There is no question pending.

The Witness: All right.

Mr. Chapman: Your Honor, I would like to ask the question of this attorney's knowledge of the litigation since he is trying to qualify himself as an expert.

The Court: No, he has not. The question is stricken.

Q. (By Mr. Chapman): Have you advised the stockholders by any communication to them concerning this litigation, not what was in it but just have you or haven't you advised them?

(Testimony of Irving G. Bishop.)

A. Well, not waiving any privilege and——

Mr. Angell: That is objected to as incompetent, irrelevant and immaterial. It is privileged what he advised his client.

Mr. Chapman: I didn't ask that, I just asked if he had.

The Court: It is not proper cross-examination. The objection is sustained.

Q. (By Mr. Chapman): Are you aware that the stockholders of your bank [363] have protested the payment of attorneys' fees and expenses from the assets——

The Court: That assumes a fact not in evidence. Let us get on.

Mr. Chapman: I would like to urge the question, your Honor.

The Court: There is no evidence as to that. I am not trying anybody's case for them, but after all it takes me less time to see it and say it than it does for a lawyer to say it or for me to argue it.

Q. (By Mr. Chapman): Have any of those payments been made since the 7th of July, 1948, Mr. Bishop?

The Court: Just a moment. Have what?

Mr. Chapman: Have any of the payments to you since the 7th of July, 1948?

The Court: What payments?

Mr. Chapman: I understood a figure was given as to what he was paid and at a certain rate.

The Court: Do you mean has he received any money since that date as fees?



(Testimony of Irving G. Bishop.)

Mr. Chapman: That is right.

The Court: Very well.

The Witness: Yes, sir.

Mr. Chapman: That is all. [364]

The Court: Any further cross-examination? (No response.)

Any redirect?

Mr. Gilbert: No further direct, your Honor.

The Court: Step down.

(Witness excused.)

Mr. Gilbert: Your Honor, at this time I will request that I may be given a stipulation with respect to Mr. Angell and Mr. Dusenbery, except as to the period of time involved—their appearance as attorneys of record would appear in the record—that their testimony would otherwise be the same with respect to payment for fees.

Mr. Works: Not as to the rate, you merely want to establish the fact.

Mr. Gilbert: Just as to the fact.

The Court: Not as to what?

Mr. Gilbert: Not as to the rate or amount of their pay, but merely as to the fact that they have been paid by the San Francisco Bank.

Mr. Angell: If I enter into a stipulation I will enter into the rate as well as the fact that I have been paid, and if you don't want to you can put me on the stand and I will testify to the same thing, because the fact is that Mr. Dusenbery and Mr. Bishop and myself all have the same rate.

Mr. Gilbert: Would you please take the [365] stand.

PHILIP H. ANGELL

called as a witness by and on behalf of the petitioner Gilbert, having been first duly sworn, was examined and testified as follows:

Mr. Gilbert: Perhaps I misunderstood you. Mr. Works has called to my attention that you would stipulate that your testimony would be the same with respect to your rate and the fact that you had been paid the rate, as the same for all three.

The Witness: Yes, Mr. Gilbert.

Mr. Gilbert: That is all. I misunderstood what you said.

(Witness excused.)

Mr. Gilbert: And Mr. Dusenbery, is that likewise the same with you?

Mr. Dusenbery: Yes, that is correct.

Mr. Works: May those stipulations be deemed to be in our record also, your Honor?

The Court: Very well.

Mr. Gilbert: Your Honor, as part of my motion I would like to——

The Court: Pardon me. I would like to ask Mr. Bishop, Mr. Angell and Mr. Dusenbery a question, and perhaps it may not be necessary if I tell them what is in my mind.

If during the period that they, and each of them, have [366] represented the San Francisco Bank, or

whatever unit they have represented in connection with this litigation, they have at any time represented any building and loan association whether in the Federal system or out of the Federal system.

Mr. Bishop: I have no hesitancy in answering. I have represented none.

The Court: Will you accept Mr. Bishop's statement?

Mr. Works: Yes.

Mr. Gilbert: Certainly.

Mr. Bishop: I have been interested in other litigation for the bank involving other associations.

The Court: I mean appearing for an individual association.

Mr. Bishop: No, sir.

The Court: Mr. Angell?

Mr. Angell: I have appeared for none before.

The Court: Or represented them?

Mr. Angell: Or represented them.

The Court: In any capacity?

Mr. Angell: In no capacity.

The Court: Do you accept Mr. Angell's stipulation?

Mr. Works: Yes.

Mr. Gilbert: Yes.

The Court: Mr. Dusenbery? [367]

Mr. Dusenbery: I have not represented any association, your Honor, since I have been counsel for the Bank.

The Court: Very well.

I think that I would like to ask one other thing. Perhaps I can state it in the form of a stipulation.

It has almost become a matter of common knowledge.

Mr. Bishop is engaged in the business of private practice in law in Los Angeles, maintaining offices as Bishop & Hoffman in the Chester Williams Building and engaged in the general practice of law.

Is that correct, Mr. Bishop?

Mr. Bishop: That is correct.

The Court: And Mr. Angell is engaged in the general practice of law in San Francisco, and the name of the firm is?

Mr. Angell: Athern, Chandler & Farmer, Hoffman & Angell.

The Court: And your offices are in what building?

Mr. Angell: 593 Market Street.

The Court: And you are engaged in the general practice of law?

Mr. Angell: For 28 years.

The Court: And Mr. Dusenbery is engaged in the general practice of law?

Mr. Dusenbery: I am engaged in the general practice in [368] Portland. The name of the firm is Dusenbery, Martin & Schwab.

The Court: Very well.

Mr. Gilbert: May I now incorporate a reference, your Honor, to the order made and proceedings heard on November 7, 1947, with respect to the consolidation of Case No. 5421 and Case No. 5678, appearing first on page 510 of that transcript, particularly line 20 thereof.

The Court: Is there not a written order?



Mr. Gilbert: Apparently not, your Honor.

The Court: Very well.

Mr. Gilbert: On line 20 of page 510, the court speaking, stated:

“But the transfer was made, and I think now I ought to dispose of it, and I will by at this time making an order of consolidation of Case No. 5678 with Case No. 5421.”

And concluding on page 514 of that same transcript, on line 7, the court stated:

“It is consolidated for all purposes.”

Your Honor, there has been a suggestion—I have just some more references to make in evidence—there has been a suggestion that I suggest to your Honor we might recess now until tomorrow morning.

The Court: That is agreeable with me. I think the [369] witnesses that you were feeling you would discommode have been disposed of.

Mr. Gilbert: That is true.

The Court: Very well. We will recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 7:00 o'clock p. m., an adjournment was taken until 10:00 o'clock a.m., Tuesday, February 28, 1950.) [370]

PHILIP H. ANGELL

recalled as a witness, resumed the stand and testified further as follows:

Direct Examination

By Mr. Gilbert:

Q. Mr. Angell, immediately following adjournment [433] yesterday you immediately informed me, and I think one or two others, that you and Mr. Bishop and——

The Court: Were you sworn in this proceeding?

The Witness: I was sworn yesterday, your Honor.

Mr. Gilbert: Yes, your Honor. You were sworn and then I withdrew the question.

The Witness: That is right.

Q. (By Mr. Gilbert): ——that you and Mr. Bishop and Mr. Dusenbery would like to make an amendment with respect to the amounts that you referred to yesterday.

A. I think it is an addition rather than an amendment. We stated yesterday, your Honor, each of us, that our rate under our agreement with the San Francisco Bank was \$100 a day for a 7-hour day.

The Court: That is, if you do not work 7 hours you do not get \$100?

The Witness: That is correct. We get a pro rata of what number of hours we work. But that is not the purpose. I want to give the whole statement to the court.

(Testimony of Philip H. Angell.)

Prior to January of this year, I believe it was, the agreement read that we were to receive \$100 a day for office work and/or such proportionate basis if less than a day of 7 hours, and \$150 a day for court appearances.

The Court: Each of you? [434]

The Witness: Each of us.

And we neglected to state that to the court yesterday, for the reason that Mr. Dusenbery, I believe, only made one charge of a court appearance, Mr. Bishop has made a few—I don't know how many, he isn't here——

The Court: That is, you get \$150 for a court appearance regardless of how long it is?

The Witness: Yes. And I have made no charge for court appearances.

Now in January of this year——

The Court: That is, since January 1st?

The Witness: At all since being attorney in the case.

The Court: I see.

The Witness: And I construed that to mean trial court appearances and not on preliminary motions.

The Court: In other words, your rate has been the same for court work as office work?

The Witness: No. Well, such work as I have done in court I have charged \$100 a day for.

The Court: For instance, 7/100 of whatever it is?

The Witness: No.

(Testimony of Philip H. Angell.)

The Court: You charge a flat \$100?

The Witness: For each day in court, because we are out of our city where our offices are and it consumes the day.

The Court: I see. [435]

The Witness: And in January of this year the agreement, I see as it came through—and it is just a letter notification—the agreement actually changed the employment compensation to be \$100 a day for work not in trial and \$150 a day for trial appearances.

The Court: Is this a trial?

The Witness: These are not construed to be trials.

The Court: Very well. So that yesterday the total chargeable fee against the Bank was 3 times \$100?

The Witness: That is correct.

The Court: Or \$300?

The Witness: That is correct.

Q. (By Mr. Gilbert): Or if this were construed as trial time it would be \$450?

A. That is correct.

Mr. Gilbert: That is all.

The Court: Any other questions?

Mr. Works: May I ask one, your Honor?

The Court: Surely.

#### Cross-Examination

By Mr. Works:

Q. Is it fair to say, Mr. Angell, that under this

(Testimony of Philip H. Angell.)

arrangement you men are being scandalously underpaid?

A. I accepted it, Mr. Works, and I am not criticizing [436] the compensation.

I might add that if I were being employed privately I would not accept employment on that basis. I think it is generally understood and known that any attorneys who accept employment from public bodies, either in Federal or state matters, receive less compensation than do attorneys in private practice for private clients.

Q. Well, now, would you care to answer my question, please?

A. Will you state the question, please?

Q. Whether or not you gentlemen are each being scandalously underpaid.

A. I would not state that, because if I stated that I should withdraw as counsel in the case. I accepted it, as each counsel did for the Bank, knowing what our compensation was going to be. Therefore it was satisfactory to us.

The Court: Do you render monthly statements and are paid——

The Witness: We are paid monthly.

The Court: You render your statements and are paid and have been paid?

The Witness: That is correct.

The Court: So there is no contingency about your compensation?

The Witness: No contingency whatsoever. [437]

Mr. Works: That is all.



(Testimony of Philip H. Angell.)

Mr. Chapman: Just a moment.

Cross-Examination

By Mr. Chapman:

Q. Mr. Angell, are you being asked to remit or refund two-thirds or any part of your fees in furtherance of your clients' interests?

A. We are not being asked to remit anything, Mr. Chapman.

Q. Or to forego any part of them?

A. No.

Q. Or to await the outcome of appeals and writs and litigation before you receive your money?

A. No. We send our bills in monthly and they are paid. When we get the money it is ours.

Mr. Chapman: That is all.

Mr. Westover: Just one question.

Cross-Examination

By Mr. Westover:

Q. Have you been paid since——

The Court: Have you been paid up to date?

The Witness: As far as I know we have been paid right up through January.

Q. (By Mr. Westover): Right up to [438] date?

A. That is correct.

The Court: Up through January, he said.

Q. (By Mr. Westover): Have you received any compensation since July 6, 1948?

(Testimony of Philip H. Angell.)

A. Oh, yes. We received our regular compensation, the bills we have rendered.

Q. Regularly since that date?

A. I would say regularly; every month.

Mr. Westover: Thank you. That is all.

The Court: You may be excused.

(Witness excused.)

Mr. Gilbert: Mr. Skelton, please.

The Clerk: Were you sworn yesterday?

The Witness: Yes.

The Clerk: Be seated.

### TRACY SKELTON

recalled as a witness, resumed the stand and testified further as follows:

#### Direct Examination

By Mr. Gilbert:

Q. You were sworn yesterday, Mr. Skelton?

A. Yes.

Q. I hand you, which I have shown to counsel for the defendants, what purports to be the resolution of May 16, [439] 1946, of the First Federal Savings and Loan Association of Wilmington. Is that the minutes?

A. Those are the minutes; yes, sir.

Q. And signed by you as president?

A. That is right.

Q. Now with particular reference to the form of a letter sent out on one of those pages, was that let-

(Testimony of Tracy Skelton.)

ter, of which the resolution or the minutes, rather, contain a form, was that actually sent out to the Bank?      A. Yes, sir.

Q. And to Washington?      A. Yes, it was.

Mr. Gilbert: May that be read into the record, gentlemen?

Mr. MacGuineas: Yes.

The Court: The resolution?

Mr. Gilbert: No, just the letter. It was sent to everybody. The date of the minutes was May 16, 1946.

The Court: Very well. Read it.

Mr. Gilbert: It is addressed to the Federal Home Loan Bank Administration, Washington, D. C., and to the Federal Home Loan Bank, 215 West Fifth Street, Los Angeles, California—

Mr. Dusenbery: We are willing to waive the reading of the document. It is quite long. [440]

Mr. Gilbert: I am only going to read the letter.

Mr. Dusenbery: We are willing to deem it read and have it copied into the record.

Mr. Gilbert: That is satisfactory.

The Court: Let me see it.

(The document referred to was passed to the court.)

The Court: You may read it.

Mr. Gilbert: Yes, your Honor.

“Gentlemen:

“The undersigned association which is or at least until March 29, 1946, was a member and stock-

(Testimony of Tracy Skelton.)

holder of the Federal Home Loan Bank of Los Angeles, respectfully protests Orders Nos. 5082, 5083 and 5084 of the Federal Home Loan Bank Administration, dated March 29, 1946, and all purported action thereunder, and hereby reserves the right to question the validity and propriety of each and all of such orders and of any and all action purportedly authorized thereby.

“If this association is to avail itself of its rights as a member of the Federal Home Loan Bank System, it may be necessary for it from time to time to deal with or transact business with the Federal Home Loan Bank of San Francisco, purportedly established by such orders. This is to advise [441] you that no such dealing or transaction is intended to be or is to be taken as an acceptance, admission or recognition by the undersigned association of the validity or propriety of the orders that we have mentioned, or of any action purportedly authorized thereunder, but that the undersigned association notwithstanding any such dealing or transaction reserves its full right to question the validity and propriety of each and all of such orders and to any and all actions purportedly authorized thereby.

“Very truly yours”

And it is signed.

The Court: Signed by whom?

Mr. Gilbert: I will ask the question.

Q. I believe you stated you signed the letter, did you, Mr. Skelton?      A. That is right.

(Testimony of Tracy Skelton.)

Q. The Association by yourself as president?

A. That is right.

The Court: What association? If you are going to read it, read it into the record and read his signature.

Mr. Gilbert: The First Federal Savings and Loan Association of Wilmington, by Tracy Skelton, President.

The Court: Very well. And it was dated [442] May 15?

Mr. Gilbert: May 16, your Honor.

The Court: Very well.

Q. (By Mr. Gilbert): Did you likewise, on or about April 5, 1948, receive a letter from the Federal Home Loan Bank of San Francisco with respect to sending a check for additional shares in their stock? A. Yes, sir.

Q. And that was the letter you have before you?

A. Yes, sir.

Q. And on April 14th did you, as president, reply thereto? A. I did.

Q. This is the letter, a copy of the letter, you sent back? A. That is right.

Mr. Gilbert: On the letterhead of the Federal Home Loan Bank of San Francisco, dated April 5, 1948, addressed to John P. Bertram, Secretary, First Federal Savings and Loan Association of Wilmington, 654 Avalon Boulevard, Wilmington, California.

"Dear Mr. Bertram:



(Testimony of Tracy Skelton.)

“The analysis of your annual report of December 31, 1947, shows the following——”

I will omit the analysis. [443]

The Court: Read it all as long as you are reading it.

Mr. Gilbert: Very well.

“Net home mortgages, \$811,231, minimum FHLB stock required, \$9200, amount of stock now held, \$8400, additional required, \$800.

“In order to bring our records to date, will you kindly send us your check for \$800 to cover eight additional shares of bank stock.

“Very truly yours,

“GERRIT VANDER ENDE,  
President”

The letter of April 14, 1948, in reply:

“Mr. Gerrit Vander Ende, President

“Federal Home Loan Bank of San Francisco

“821 Market Street

“San Francisco 3, California

“Dear Mr. Vander Ende:

“Enclosed find our check No. 10347 in the amount of \$800 for the purchase of eight additional shares of stock. In making this additional purchase it is to be understood that it is not our intent or acceptance or admission or recognition of the legal status of the Federal Home Loan Bank of San Francisco, and that we reserve our full right to question the validity and propriety of all actions of the officers and directors of the Federal Home Loan Bank of

(Testimony of Tracy Skelton.)

San Francisco and those [444] of the Federal Home Loan Bank Administration as they pertain to said bank.

“You may forward to us the said shares at your convenience.

“Very truly yours.

“TRACY SKELTON,  
President”

That is all of this witness, your Honor.

The Court: Cross-examine.

Mr. MacGuineas: No questions.

The Court: Mr. Chapman?

Mr. Chapman: None.

The Court: You may be excused.

(Witness excused.)

Mr. Gilbert: Mr. Bertram.

### JOHN BERTRAM

called as a witness by and on behalf of the petitioner Gilbert, having been first duly sworn, was examined and testified as follows.

The Clerk: What is your name?

The Witness: John Bertram; B-e-r-t-r-a-m.

### Direct Examination

By Mr. Gilbert:

Q. Mr. Bertram, in 1946 were you the secretary of the First Federal of Wilmington?

A. I was. [445]

(Testimony of John Bertram.)

Q. Were you present some time around in June or July at the so-called spot check examination to which we referred yesterday?

A. Yes, I was in the office.

Q. Do you recall the name of the examiner?

A. Mr. Laippley, I believe.

Mr. Fitting: If the court please, I believe that is spelled L-a-i-p-p-l-e-y.

Q. (By Mr. Gilbert): You are still connected with the First Federal? A. Yes, sir.

Q. Approximately a week or 10 days ago, or some such matter, did you have a conversation with Mr. Noon at the bank here in Los Angeles with respect to attorneys' fees? A. Yes, I did.

Q. Do you recall when that was?

A. Friday, February 17th.

Q. And where did that conversation occur?

A. In Mr. Noon's office in the bank.

Q. In the Chester Williams Building?

A. Yes.

Q. Who was present at the conversation?

A. Mr. Noon and Mr. William Purmort.

Q. And yourself? A. Right. [446]

Q. Now will you relate what was said by Mr. Noon and yourself with respect to the matter of attorneys' fees?

A. Mr. Noon asked me what we were paying Gilbert. My reply was that we were not paying him anything, that he was looking to the court for his fees, representing the First Federal Savings of Wilmington, a Class C association.

(Testimony of John Bertram.)

Q. Did he say anything to you with respect to whether or not that was or would be a supervisory matter?

A. Yes. It was his supervisory capacity to determine whether we had any contingent liability in employing Mr. Gilbert as our attorney.

Q. And after did he say anything to you with respect to talking to you in different capacities?

A. Yes. At the close of our conversation he said, "Well, that is all in my capacity as a supervisory agent, but tell me just personally how does Mr. Gilbert expect to get paid?"

The Court: What did you say?

Q. (By Mr. Gilbert): Did you give him substantially the same answer?

A. Yes, that it was up to the court to determine.

Mr. Gilbert: That is all.

The Court: Cross-examine.

Mr. MacGuineas: No questions.

Mr. Angell: I have one question. [447]

The Court: Very well.

That was the first time he had mentioned to you that he was talking to you as a supervisory agent, was it?

The Witness: Yes. He said, "I have been talking to you as a supervisory agent."

The Court: That was the first time he had mentioned it in that conversation?

The Witness: No, he had mentioned that it was in his supervisory capacity to determine what our liability was.

(Testimony of John Bertram.)

The Court: I mean when he first opened the conversation and asked you the question prior to his asking you the question, had he told you that he was talking to you then as supervisory agent or as branch manager of the Bank, which?

The Witness: No, he hadn't stated that.

The Court: It was after you answered the question that he told you that it was part of his supervisory capacity?

The Witness: That is right.

The Court: Do you see Mr. Noon frequently?

The Witness: Not very.

The Court: Or have you in the course of your business?

The Witness: Not too frequently. I was seeing him on other business.

The Court: Well, in the course of your business do you see him occasionally?

The Witness: Yes, occasionally. [448]

The Court: About how often have you in the past year, let us say?

The Witness: Perhaps three or four times.

The Court: Did he ever say to you at any of those times that he was talking to you as a supervisory agent?

The Witness: I don't believe so.

The Court: Very well.



(Testimony of John Bertram.)

Cross-Examination

By Mr. Angell:

Q. Did he ever indicate to you in what capacity he was talking to you?

A. During this particular conversation?

Q. No, in other conversations with him.

A. Not that I recall.

The Court: You knew him to be the manager of the branch bank?

The Witness: Certainly.

Q. (By Mr. Angell): And you also know he is the supervisory agent for the Federal Home Loan Bank of San Francisco, do you not?

Mr. Chapman: Just a moment. I would like that fixed as to the question of time, your Honor, as to when that was.

The Court: Sustained.

Mr. Angell: I think if you will reread the question it fixes the time. [449]

I will withdraw the question because my co-counsel informs me that they are not acting supervisors for the San Francisco Bank but for the Bank Board. I will reframe the question.

Q. You know, do you not, that Mr. Noon is the acting supervisory agent for the Federal Home Loan Bank Board?

Mr. Chapman: Same objection.

The Court: You mean at the moment?

Mr. Angell: I said "is."

The Court: Objection overruled.

(Testimony of John Bertram.)

Mr. Chapman: May I have the question read back, Mr. Reporter?

(The question referred to was read by the reporter as follows:

(“Q. You know, do you not, that Mr. Noon is the acting supervisory agent for the Federal Home Loan Bank Board?”)

Mr. Chapman: Your Honor’s ruling indicates “is” as of today?

The Court: “Is” means now.

Mr. Angell: Present.

The Witness: Yes, we were advised by letter that he was appointed as acting supervisory agent of this district.

The Court: When?

The Witness: I don’t recall the date. [450]

The Court: Recently?

The Witness: A number of months ago.

The Court: Before you received that letter, had you done business with Mr. Noon in connection with your conduct of your affairs of the association?

The Witness: Oh, yes.

Q. (By Mr. Angell): Now in connection with your annual audits of the Federal Savings and Loan Associations—first let me ask you —there are annual audits, are there not, of the associations or approximately an audit each year?

A. An audit is conducted in conjunction with the examination.

(Testimony of John Bertram.)

Q. An audit and examination?

A. That is right.

Q. Now have you in the past dealt with Mr. Noon as supervisory agent of the Home Loan Bank Board?

A. Not before the last examination that we had.

Q. About when was that?

A. January 20 of 1950—pardon me—December 20, 1949.

The Court: By the way, how can you tell when you are dealing with Mr. Noon as a supervisory agent and as the branch manager? Can you tell the difference?

The Witness: I haven't been able to. [451]

Q. (By Mr. Angell): Has it been the common practice that after these examinations and audits that so far as known to you, that frequently you are asked to discuss the results of those examinations with the supervisory agent?

A. No, we have never been asked to.

Q. You never have? A. No.

Q. So far as known to you?

A. That is right.

Q. Now in these examinations and on your books you are required, are you not, under the form of your bookkeeping, to show any contingent liabilities of the association?

Mr. Chapman: Just a moment, your Honor. That is not proper cross-examination of a discussion or conversation with someone. I object to it on that ground.

(Testimony of John Bertram.)

The Court: Objection sustained.

Q. (By Mr. Angell): Are you required, under the bookkeeping system of the Home Loan Bank Board, to make report to them of all your liabilities?

Mr. Chapman: Just a moment. Same objection. That is not proper cross-examination.

The Court: Same ruling. The question is not what he is required to do. All he can testify to is what he knows. The [452] law speaks for itself as to what he might be required to do.

Mr. Angell: I will withdraw the question.

Q. Do you know the form of the reports you are supposed to make to the Home Loan Bank Board?

Mr. Chapman: I make the same objection, your Honor.

Q. (By Mr. Angell): With regard to your assets and liabilities each year.

Mr. Chapman: That is not proper cross-examination of the conversation with Mr. Noon.

The Court: Objection overruled. Answer yes or no. Do you know the form?

The Witness: Yes.

Q. (By Mr. Angell): And as a part of that form, Mr. Bertram, is it true or not true that you are required to show in your liabilities any contingent liabilities?

A. Yes, that is part of the form.

Q. And if there were any auditor's fees or engineer's fees or appraiser's fees or attorney's fees,

(Testimony of John Bertram.)

or any other kind of fees which you are paying on a contingent basis, you would be required, would you not, to show that in this return?

Mr. Chapman: Your Honor, I think the court has already ruled on that.

The Court: That calls for a conclusion. Objection [453] sustained.

I see it is time to recess. I am going to have to leave. I think we can resume at 2:30 today.

Before doing so, I would like to make an observation in connection with the application of the O'Melveny & Myers application.

In reading it, I notice that there is a statement made that the committee is a committee formed of the shareholders and members, or whatever you call them, of the Los Angeles Bank, and it also states that they were a committee of the California Savings & Loan League. I will expect counsel to demonstrate whether or not they are appearing in this action as a committee of the shareholders or as a committee of the California Savings & Loan League.

I mention that in order that counsel may know what is in my mind with relation to it, because I do not know that I would have the power here now, and will not determine it until I hear further argument, to allow a fee or the committee of the shareholders. But it would seem to me that there might be a greater question as to whether or not I would have the power to allow a fee or a committee of an association, the California Savings & Loan League.



(Testimony of John Bertram.)

Mr. Works: Your Honor, there was a resolution adopted by the board of directors of the Los Angeles Bank. In the other application for moneys advanced by this committee, it [454] changed its name as time went on for the benefit of the bank. Now that question is present as to that application for refund of expenses.

As far as the fee application is concerned, there is no question but what the attorneys, Mr. Fitz-Patrick and ourselves, were employed by resolution duly entered into by the board of directors of the bank.

The Court: And the class action? You also refer to the fact that you filed an application with the Corporation Commissioner of the State of California and received a permit. I have not seen it. It may be in these voluminous files someplace. I have not seen either a copy of the permit nor a reference to its number.

Mr. Works: We can produce that, if your Honor please.

The Court: Very well. We will recess until 2:30, if we may, gentlemen.

(Whereupon, at 11:30 o'clock a.m., a recess was taken until 2:30 o'clock p.m. of the same date.) [455]

Los Angeles, California; February 28, 1950;

2:30 o'Clock P.M.

The Court: Any ex parte matters?

The Clerk: No, your Honor.

The Court: Mr. Gilbert, you had a witness on the stand, I believe.

JOHN BERTRAM

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Mr. Gilbert: Mr. Angell says he is finished unless some other counsel have questions.

The Court: Any other questions? (No response.)

The Court: Very well.

(Witness excused.)

Mr. Gilbert: Your Honor, at this time I would like to offer an additional copy, because it is separated from an affidavit, of the Congressional Hearing, report of the Congressional Hearing.

Mr. Angell: That is objected to as incompetent, irrelevant and immaterial, not within any issue before this court.

Mr. Gilbert: It has been before the court and was examined by Mr. Morrow, Mr. Darling and Mr. Belcher in connection with the questions.

The Court: The objection is overruled. It is admitted in evidence. [456]

The Clerk: Shall I mark it as an exhibit, your Honor?

The Court: Yes, mark it as an exhibit.

The Clerk: No. 9.

(The document referred to was received in evidence as Petitioner Gilbert's Exhibit No. 2-27-50-9.)

Mr. Gilbert: I also offer by reference, your Honor, copies of Orders 5082, 5083 and 5084, by reference to Exhibit No. 11-7-49, No. 11; also Order 5421 by reference, the reference being Exhibit 11-7-49, No. 7; and reference to Order 2015, I particularly offer with reference to a date, which is set forth as Footnote 11 in the preliminary injunction which was filed December 1, 1949.

The Court: I think all of those orders are set forth in footnotes.

Mr. Gilbert: Yes, they are.

The Court: So why not make reference to the footnotes rather than to previous exhibits?

Mr. Gilbert: Yes. 5082, 3 and 4 is Footnote 5.

The Court: That will be No. 10 here. And by reference to Footnote 5 of the order of this court dated when?

Mr. Gilbert: December 1, 1949.

The Court: December 1, 1949.

Mr. Gilbert: The Order 2015 is Footnote No. 11 of the same document.

The Court: That will be No. 11 here by reference to [457] Footnote No. 11 in the order of December 1, 1949.

Mr. Gilbert: We also offer by reference letter of October 26th, from Mr. Peyton Ford to which is attached a letter dated October 21 from Mr. Divers, which is Exhibit No. 17 of 11-7-49.

The Court: That will be No. 12, and the two letters are Exhibits 17 of 11-7-49.

Mr. MacGuineas: Your Honor, the official defendants object to the offer of that in evidence as not being relevant to the issue of attorneys' fees here claimed. I am referring to the letter of Mr. Ford.

Mr. Gilbert: The actual reference was to the letter of October 21st, which will support, I think, an argument with reference to the amount of work that is necessary to be done even in the opinion——

The Court: I think they are both material. The objection is overruled. They are both admitted.

(The documents offered by reference were received in evidence and marked Petitioner Gilbert's Exhibits Nos. 2-27-50-10, 2-27-50-11 and 2-27-50-12.)

Mr. Gilbert: By reference to the stipulation between counsel, which was entered into on March 22, 1949, and filed the same date, with reference to attorney fees, fees then pending, and the testimony on the same date in connection with such stipulation, together with the court's order of April 5, 1949, for an interim allowance of attorney fees, and together [458] with the testimony before the court in chambers on May 10, 1949, during which proceedings the stipulation was set aside.

The Court: In effect what you are offering is the entire proceedings in connection with the application?

Mr. Gilbert: In substance, that is correct.

The Court: Of Chapman, Westover and others for attorney fees?

Mr. Gilbert: That is true.

The Court: Culminating in the order of April 5, 1949—was that the final order?

Mr. Gilbert: The final order was dated May 10, 1949.

The Court: Culminating in the final order of May 10, 1949?

Mr. Gilbert: That is correct.

The Court: That is, the stipulation, the first order, the hearing, the evidence, the petitions——

Mr. Gilbert: Yes, your Honor.

The Court: ——the conference in chambers—I do not know whether that conference in chambers was reported or not.

Mr. Gilbert: Yes, it was.

The Court: May 10th conference was reported?

Mr. Gilbert: Yes, and so was March 22nd.

The Court: There were a number of them that were not reported, I regret. [459]

Mr. Gilbert: I am quite certain that that was, however.

Mr. Chapman: May 10th was reported, without any question.

Mr. Fitting: I have it right here.

Mr. Gilbert: And March 22nd was also reported.

The Court: The March 22nd conference in chambers?

Mr. Gilbert: Yes, and May 10th was also reported.

The Court: March 22nd was the date of the



hearing, was it not, and the taking of the testimony?

Mr. Gilbert: March 22nd was the date of the conference in which the stipulation was entered into, then there was a hearing and order on April 5th, an award and an interim allowance, and then the hearing on May 10th at which the stipulation and the two-thirds remission was made and the order thereon.

The Court: I see.

Mr. MacGuineas: Your Honor, I also object to the admission of any of those in evidence on the ground that they are immaterial to this application of fees, particularly because they all relate to transactions prior to the entry of Mr. Gilbert into this case and the legal services for which he is now claiming reimbursement.

Mr. Angell: I wish to add the objection that it is incompetent, irrelevant and immaterial, and not within any issue here before the court in the matter of the application of Mr. Gilbert's or the others for attorneys' fees or allowances of [460] expenses.

The Court: I fail to see the immediate materiality of that hearing and the things you have just referred to.

Mr. Chapman: May I be heard, your Honor?

The Court: They are a part of the proceedings in this case, there is no doubt, as are all of the other files and records and transcripts and orders which are part of the proceedings and in connection with which it would be the duty of any counsel to become familiar with. But beyond that I cannot see the materiality here.

Mr. Gilbert: There may be, in my view, some materiality with respect to the history connected with the attorneys' fees, the abandonment of appeal matters and things of that kind which occurred and are reflected in those hearings. I didn't request all of the testimony with respect to all of the hearings but just the two selected dates.

The Court: Who wants to speak first?

Mr. Works: May I say something?

The Court: Yes.

Mr. Works: As far as this current offer is concerned, the substantive evidence as to these hearings we have just been discussing, we withdraw any part of that evidence as any part of our evidence in support of our application for fees. That is not to include any recitals in our affidavits as to attendance upon the meetings—they are already in evidence — [461] but we do not join in Mr. Gilbert's offer of this particular testimony in so far as our application is concerned.

The Court: Very well.

Mr. Chapman: I would like to join in the application and in the offer in connection with our response to all of the attorney fee applications. I feel that it is most material because whatever other power your Honor has inherent to the court in the litigation, you have in addition the power of a stipulation entered into on consideration of vacation of substantial awards of fees, part of which went to myself and part to other counsel, and we consented to our financial detriment to those vacating of our fees on the stipulations and conditions of the letter

from the Attorney General of the United States, from Peyton Ford, in which it was agreed, in so far as any agreement seeks to be binding on the Government in this case—and that word “all” is all-inclusive and comprehensive—that all further attorneys’ fees would be determined by proceedings in this court, adversary proceedings, etc., if there was a settlement.

The Court: That letter is in evidence in these proceedings.

Mr. Chapman: That is correct.

The Court: That is attached to your affidavit, or somebody’s.

Mr. Chapman: I am not so sure that it is in evidence. [462] It is filed as part of the files.

The Court: I think that was attached to somebody’s affidavit—no, it was not, it was referred to. I asked for it yesterday to read it.

Mr. Gilbert: It was referred to but not attached.

The Court: Is that the letter of October 26th?

Mr. Gilbert: No, your Honor.

Mr. Chapman: That is right. The letter of April 27th.

Mr. Gilbert: April 27th is the date.

The Court: That letter has not been offered in evidence yet?

Mr. Gilbert: Not yet; no.

The Court: Do you offer it?

Mr. Gilbert: Yes, I do.

The Court: Very well. That letter of April 27th is offered, to which everybody objects on all

of the grounds heretofore stated and any that they may have forgotten to mention.

Mr. Works: I might save some time if we all consider that your Honor can take judicial notice of everything in this file.

The Court: That is correct.

Mr. MacGuiness: Then may I inquire why your Honor is entering offers in evidence at this hearing of what is already in the case? [433]

The Court: I can take judicial notice of them. There have been some particular affidavits which have been in other matters which caused thought were of particular materiality to this hearing here, and I have entertained them, or if there is some particular materiality that relates to the issue as to the fees earned and the power of the court to allow them. I can see the materiality of the letter from Mr. Ford of April 27, 1949, with particular relation to the application made, not only by the O'Melveny & Myers application, but also by the Gilbert application, and with particular relation to the objections raised to the allowance of any fee on the basis that each of these concerns are private concerns, and in one of the affidavits I saw this morning it said that Mr. Gilbert's firm had so many mortgages and so much assets and property, so I think that that letter of April 27th is material, and that statement is that I wish to read that statement. I will admit it and it may be read in the record and may be copied in the record at this point as Petitioner's Exhibit 1-17-51-13.



(The document referred to was received in evidence as Petitioner Gilbert's Exhibit No. 2-27-50-13.)

(The exhibit referred to is, in words and figures, as follows, to wit:) [464]

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PETITIONERS' EXHIBIT No. 2-27-50-13

Address Reply to  
United States Attorney  
And Refer to  
Initials and Number  
PF:HEM

United States Department of Justice  
United States Attorney  
Southern District of California  
600 Federal Building  
Los Angeles 12

April 27, 1949

Messrs. Westover & Smith,  
Attorneys at Law,  
Suite 1007,

1015 Pacific Southwest Bldg.,  
216 West 6th Street,  
Los Angeles 14, Calif.

Re: Paul Mallonee et al. vs. John H. Fahey,  
et al.

No. 5421-PH Civil and Consolidated Case  
No. 5678-PH Civil

Gentlemen:

At our conference in the office of the United States Attorney yesterday, April 26th, you requested



that, prior to further consideration of our proposal for settlement, I submit to you a final offer in writing stating the terms in respect to attorneys' fees, on which negotiations may proceed. After consultation with the Home Loan Bank Board, I am authorized to state that the Board is prepared in respect to matters of attorneys' fees, in addition to the proposal heretofore [465] made, to negotiate on any one of the following bases:

(1) The attorneys' fees, whether interim or final, shall be judicially determined in an adversary proceeding and the stipulation dated March 22, 1949, and the subsequent award of April 1, 1949, be vacated, or

(2) Following the suggestion of the court, one-third of the amount awarded by the court in its decision of April 1st shall be paid now on proper order of the court (less the deduction of \$50,000 previously paid, as provided in presently proposed order), regardless of the outcome of negotiations for settlement; the said stipulation and award shall be vacated and any further attorneys' fees shall be judicially determined in an adversary proceeding at the conclusion of negotiations for settlement, if agreement thereon be reached, or in the litigation, if such there be, or

(3) Following the suggestion of Mr. Fussell, one-third of the amount awarded by the court in its decision of April 1, 1949, to be paid now as an interim allowance on account by order of the court (less the deduction of \$50,000 previously paid as

provided in presently proposed order) regardless of the outcome of any further negotiations for settlement, [466] the said stipulation and award shall be vacated and any further attorneys' fees shall be determined by the court on such showing as the court may require, subject to agreement of the parties as to the maximum amount thereof at the conclusion of negotiations for settlement, if agreement thereon be reached. If no settlement be reached, any additional fees shall be judicially determined in said litigation.

The other terms of our letter of April 16, 1949, remain unchanged, except that the provisions of numerical paragraph 4 is open to further consideration in accordance with our prior conversation.

It is requested that you indicate your position on these suggestions by 12:00 noon, Monday, May 1, 1949.

Your proposal for an alternative to a dismissal with prejudice should be delivered to us by the same date and hour.

There is no occasion to indicate any specific amount of attorneys' fees until you have stated which of the above propositions is acceptable to you.

Yours very truly,

/s/ PEYTON FORD,

PEYTON FORD,

The Assistant to the Attorney  
General.

(following in ink) [467]

PS. The time is set for Monday because of the shortness of time involved.

PF

Note: The above form of letter was sent to numerous attorneys among which were Mr. Chapman, Mr. Tremaine, Mr. Sutter and Mr. Thomas and the firm of O'Melveny and Myers.

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The Court: As to the other matters, I still fail to see how they have any more materiality to Mr. Gilbert's application than any of the other files and records in this case.

Mr. Chapman: I would like to amend my offer and offer into evidence at this time all of the records, files, transcripts, and exhibit, documents and proceedings in the two consolidated cases, No. 5421 and No. 5678, and the related matter from the date of filing until the present time.

The Court: The court can take judicial notice of them, and for that reason they are already in evidence. I do not see any necessity to offer them particularly unless you expect that however this eventuates there will be an appeal in order to acquaint the appellate court with the rather monumental job of examining those files and records.

I anticipate, however, that by the time this appeal on this matter, however it eventuates, will get up there they will have already had some opportunity in connection with the [468] pending appeal to examine these records.

Mr. Chapman: In view of the court's statement I think there is no further argument on my part. If they are in evidence, they are in.

Mr. Angell: I wish to state the motions here being made are made on the files and records and papers and they are a part of the record here on this motion anyway.

The Court: I will not sustain the Government's objection that they are immaterial, I think everything in the files and records is material, but I do not see any need for particularly encumbering this record on this hearing at this stage with re-identifying particular exhibits. Now I can see it with relation to the particular matters that have heretofore been covered, the text of the orders and the letter of October 26 and of October 21 and the letter of April 27, 1949.

As, for instance, you refer in your application to the work you did in connection with the petition for an order to show cause as to the progress of settlement. Well, that is part of the files and records, and certainly I can take judicial notice of it. It is before the court to consider now, just as much as any of these matters that have been specifically introduced in evidence. And, as Mr. Angell has indicated, your motions are made on the files and records of these proceedings. [469]

Mr. Gilbert: That would likewise, under your Honor's observation, be true with respect, and more with the idea of focusing counsel's attention to things that we propose to touch on in argument, which will also be with reference to your Honor's

order of March 13, 1948, directing the San Francisco Bank to make the deposits—I am not making this as an offer at this time, but advising, if I may, things to which we will refer—and the motions therefor by the respective parties, Long Beach Federal of February 9, 1948, Mr. Westover's petition of February 24——

The Court: Counsel, in view of the fact that I take judicial notice of everything in the files and records and everything that has heretofore gone on in connection with this matter, you may in your argument choose to call my attention to anything because it is just as much in evidence as if it had been specifically and particularly introduced.

Mr. Gilbert: Very well, your Honor.

Now will that ruling, your Honor, also apply to testimony taken before the special master?

The Court: No. I do not know. Maybe I spoke too soon. The principle is that a court can take judicial notice of its own files and records and proceedings. Does counsel have any view on it?

Mr. Gilbert: Your Honor, it would appear to me that it is a part of the proceedings before the court. I should think [470] that your Honor would be just as entitled to take the official transcript of testimony given before the master the same as though you could take cognizance of testimony given before your Honor. I can see no reason for a differentiation between the two. They are both under oath in formal proceedings under your Honor's direction by his special master. [471]



April 7, 1950; 10:00 A.M.

The Court: Are there any ex parte matters?

The Clerk: No, your Honor.

The Court: Mallonee vs. Fahey.

Mr. Gilbert: Ready.

Mr. Works: Ready.

The Court: The clerk's calendar indicates the following on for hearing:

Hearing on motion of plaintiff Federal Home Loan Bank of Los Angeles for order directing payment of attorney fees on account. That is a further hearing.

Further hearing on motion of First Federal Savings & Loan Association of Wilmington for order directing payment of attorney fees on account.

Further hearing of the Los Angeles Bank for order directing repayment of moneys advanced by Shareholders Protective Committee.

Hearing on motion of plaintiffs for order requiring and ordering certain defendants, cross-defendants and third-party defendants to appear and testify, which appears to be a new motion.

And hearing on motion of defendant and cross-defendant Federal Home Loan Bank of San Francisco to dismiss the above-mentioned motion and to strike it and all supporting papers [564] filed in connection therewith.

Very well.

Mr. Works: May I direct your Honor's attention to Item No. 3, the application for the reimbursement of expenses?

The Court: Yes.

Mr. Works: It has been stipulated by all parties present that that matter may go off calendar, your Honor. I think that it will result in the ultimate saving of time to the court.

The Court: Off calendar. To be reset on notice?

Mr. Works: We had no understanding on that. Is it satisfactory to be reset by any party on 10 days, 15 days, 20 days?

Mr. Angell: On notice.

The Court: On notice.

Mr. Works: Fine.

The Court: Off calendar, to be reset on notice.

Mr. Works: Thank you, your Honor.

The Court: I am unacquainted with the contents of this motion for an order requiring certain defendants, cross-defendants and third-party defendants to appear and testify, and of course with the motion to strike it or dismiss it.

Whose motion is that?

Mr. Chapman: I am one of the moving parties, your Honor.

Mr. Westover: That is mine, your Honor. [565]

The Court: If I can see the file, and then if you will make a statement as to what your motion is.

Mr. Chapman: May I make a suggestion? I think that that is more likely to come up in rebuttal on our part when the motion for attorney fees and expenses are concluded. It may well be that if your Honor has read the affidavits—

The Court: No, I have not read anything.

Mr. Chapman: Well, the motion is directed to

about a hundred pages of affidavits that were filed and served on us about three weeks ago.

Mr. Bishop: Your Honor, I would like to state that it is our opinion that the hearing on the other motions could not be heard until that motion is disposed of, because it is supposed to be in connection with the application for attorney fees that they desire the relief requested. That is our very point, that not by the remotest chance could it have anything to do with it. It is not their motion for fees.

Mr. Chapman: I would like to urge the motion when our time comes, your Honor.

Mr. Westover: Your Honor please, may we have the appearances today? There have been some stipulations made.

The Court: Very well. Let us have the appearances.

Mr. Bishop, Mr. Angell and Mr. Dusenbery for the Federal Home Loan Bank of San Francisco.

Mr. Fitting for the official defendants. Mr. McKenna for [566] the Home Loan Bank Board and the official defendants.

Mr. Fussell, Mr. Whyte, Mr. Works and Mr. FitzPatrick for the Federal Home Loan Bank of Los Angeles.

Mr. Gilbert for the First Federal Savings & Loan Association of Wilmington.

Mr. Sutter for Title Service Company.

Mr. Westover for the Mallonee plaintiffs, and Mr. Chapman for the Long Beach Association.

Mr. Westover: Thank you.

Mr. Chapman: I would like to make an inquiry. I have been unable to keep track of just when Mr. Bishop, Mr. Angell and Mr. Dusenbery were and when they were not appearing for the officers and directors of the San Francisco Bank. Is this one of the "on" days or "off" days?

Mr. Angell: I think we had better get down to business instead of asking questions like that. If you look at the pleadings, we state in our pleadings who we appear for on each motion, and in this particular motion we are appearing for the San Francisco Bank.

The Court: And nobody else?

Mr. Angell: And no one else, as our appearances show.

The Court: This motion about producing somebody to testify states:

"You and Each of You, Will Please Take Notice, That [567]

"1. The plaintiffs, Mallonee, Bucklin and Fergus, the Shareholder Members Protective Committee of the Long Beach Federal Savings & Loan Association;

"2. Long Beach Federal Savings & Loan Association, cross-claimants and third-party plaintiffs;

"3. Title Service Company, a corporation, defendant and cross-claimant in interpleader;

"4. Robert H. Wallis, defendant and cross-claimant in interpleader; and

"5. George Turner, defendant and cross-claimant in interpleader:

"Will on Friday, the 7th day of April, 1950, at



the hour of 10:00 o'clock a.m. or as soon thereafter as counsel may be heard, in Courtroom No. 1 of the Honorable Peirson M. Hall, United States District Judge in the United States Courthouse and Post Office Building, Los Angeles, California, present to the honorable court their motion for order of court requiring defendants and cross-defendants Home Loan Bank Board, et al., and their deputies, agents, employees, etc., to appear and testify. Reference is made to said motion for further particulars. Said motion will be based upon all of [568] the pleadings, papers, files, documents and records in the above-entitled action and upon this notice and motion including memorandum of points and authorities and affidavits attached thereto."

And the motion is that the parties on whose behalf it is made move the court for an order requiring John H. Fahey, A. V. Ammann, Home Loan Bank Board, Federal Savings & Loan Insurance Corporation, William K. Divers, O. K. LaRoque, J. Alston Adams, John M. Wyman, R. J. Strecker and Irving Bogardus to appear and testify. The motion mentions them in their several individual and former official capacities.

Is this in relation to the application for fees?

Mr. Works: We say that it is not.

The Court: It does not appear to be. It states:

"Said motion will be based upon the following grounds:

"1. That said defendants and cross-defendants, (a) to (j), have filed with this honorable court for consideration, and have urged that said court make



orders and judgments thereon, approximately 110 or more pages of affidavits, exhibits attached thereto, and other evidentiary matter, and

“2. That such purported evidence, etc., is in the form of hearsay, opinion, legal conclusions, surmise, guess, and inference, each and all of [569-70] which are not based upon facts, or actualities. That to demonstrate the falsity, or to verify the accuracy thereof, requires the test of cross-examination of such witnesses personally present in court \* \* \*”

Mr. Chapman: Your Honor, I think I should be heard on this situation.

I think your Honor recalls that you made an order permitting the late filing of so-called counter-affidavits. In furtherance of your Honor's order, certain affidavits were filed. Among the affidavits filed were these referred to in this motion.

In my view those affidavits are not pertinent to the matter of attorney fees, but we did not desire to make a motion to strike, nor to take that matter from consideration by your Honor at some time. We feel that the matter presented in those affidavits should be decided by this court.

The Court: You say:

“That most of the allegations set forth in said affidavits and exhibits are extraneous to the issues of allowances of attorneys' fees to the moving parties \* \* \*”

Mr. Chapman: That is right.

The Court: “\* \* \* but if in evidentiary form, and if truthful, would, or might in part, be pertinent [571] to the decision of issues concerning the

Long Beach Association, its seizure and attempted confiscation \* \* \*''

If you think that is true, why not make a motion to strike them?

Mr. Chapman: I was coming to that point now, your Honor.

The Court: Very well.

Mr. Chapman: When they have presented to you matters for decision after denying your jurisdiction for years, we would like to have you decide the matters that they thus present to you. We would like to have the decision based on their personal cross-examination here in court, which we are prepared to show are within your power.

I don't think that you need to hold up the proceedings on attorneys' fees until you complete that matter. Our motion to strike would simply take it from your consideration because it is not now pertinent to attorney fees matters which they have presented generally and which are pertinent to the main litigation.

The Court: If that is the case, then why do you not have discovery on it if it is pertinent only to that? Where are these 110 pages of affidavits that they are talking about? Do you know, Mr. Clerk?

Mr. Chapman: I think I can locate them if I may have the latest file. [572]

Mr. Westover: We received them on March 20th.

(The documents referred to were passed to the Court.)

The Court: Let me ask this question: Was there

filed in opposition to the motion for attorney fees an affidavit of John H. Fahey?

Mr. Chapman: Yes, several. More than one in the same filing. One was dated sometime in March, 1950, another was dated either April 19 or April 21, 1949, approximately 11 months prior to the filing date and nearly a year prior to the present hearing date.

The Court: There are two affidavits?

Mr. Chapman: Two or more of Mr. Fahey's.

The Court: Mr. Fitting, how many were there? Do you know?

Mr. Fitting: I could probably tell you. There were filed six affidavits in all.

The Court: By Mr. Fahey?

Mr. Fitting: No. Two by Mr. Fahey, one dated April 19, 1949, and one dated March 18, 1950.

The Court: There was an affidavit by Ammann?

Mr. Fitting: That was filed a little earlier.

The Court: Was there an affidavit filed by Ammann in opposition to the motion for attorney fees?

Mr. Fitting: Yes, about the 15th I believe. I think that was filed about the 15th. [573]

The Court: One affidavit?

Mr. Fitting: Yes.

The Court: Filed the 15th?

Mr. Fitting: Yes. That was filed earlier than this group.

The Court: When was it filed? I will have to know the date or we cannot locate it.

Mr. Angell: Either by or before March 15, when the Ammann affidavit was filed.

Mr. Fitting: It was filed on the 15th.

The Court: March 15?

Mr. Fitting: Yes.

Now these others, all the others, were filed on March 20th.

There were two Wyman affidavits, one dated April 19, 1949, and one dated March 17, 1950.

The Court: Yes.

Mr. Fitting: Then there was an affidavit of William K. Divers, dated March 18, 1950.

The Court: One affidavit of Divers?

Mr. Fitting: That is right.

Then there was one of R. J. Strecker.

The Court: Filed March 20th?

Mr. Fitting: Yes.

The Court: And dated when? [574]

Mr. Fitting: Dated April 22, 1949.

Then in addition I presume the motion also attacks Mr. Bogardus' affidavit, which was not filed by us but by the Bank, which also was dated on the 20th, I believe.

The Court: And its date?

Mr. Fitting: That affidavit is dated March 17, 1950.

The Court: There was no affidavit filed by La-Roque or Adams or the Federal Savings & Loan Insurance Corporation or the Home Loan Bank Board. Of course I do not know how they could make affidavits anyhow.

Mr. Chapman: I think the affidavit by Mr. Divers, your Honor, recited his various capacities.

including the Home Loan Bank Board and the Federal Savings & Loan Insurance Corporation.

I think the first matter for consideration is whether or not your Honor is to consider this hundred pages of affidavits in connection with attorney fees. If you are, then our motion must be heard now. If you are not, if those are to go to a later date, then the motion likewise can be heard at a later date.

The Court: Is there a motion to strike these affidavits on the ground that they are immaterial?

Mr. Chapman: No, and I do not want to strike them, your Honor, from the files generally. They might be stricken from your consideration of attorney fees, but I have no intention [575] of letting these defendants escape from the court when they have submitted these issues to you for decision. They are general issues that go further than attorney fees; it is a submission to you for decision of matters that they are now appealing to the Circuit on the ground that they want to decide them themselves. I am certainly not going to let them go in and go out on a motion to strike.

The Court: When was Fahey's affidavit filed, both of them?

Mr. Fitting: Both were filed on the 20th.

The Court: March 20th?

Mr. Fitting: Yes. All of those affidavits were filed on the 20th except Ammann's affidavits.

The Court: The movants are not making any motion to strike these affidavits?

Mr. Works: I will move to strike them at the



present time, your Honor, that is, from consideration as to the merits of the attorney fees application, on the ground that they do not go to prove or disprove any material issue in connection with that application.

Mr. Chapman: I have no opposition to striking them from consideration of attorney fees, but I do oppose any motion to generally strike them from consideration in the case.

Mr. Bishop: To which motion we make objection on the ground that it is not timely or presented in the proper manner. [576]

Mr. Works: I will concede that they are entitled to notice if they desire on such a motion, your Honor.

Mr. Angell: These affidavits are filed in response to affidavits filed by the movants or by—I think they were all filed by Mr. Chapman and Mr. Westover—and they are answering those affidavits and statements made therein, and Mr. Gilbert's affidavits, in which in those affidavits, either directly or by inference, it is stated the reasons for the dissolution of the Los Angeles Bank and the making of the orders which led to and accomplished the creation of the San Francisco Bank, also the reasons for appointing a conservator. That is, it states their idea of what the reasons were.

The Court: I do not think that in the matter of the application of attorney fees here that this court is called upon to make a decision as to whether or not the plaintiffs' positions are correct or the defendants' positions are correct. It is an application for an interim allowance, and under the decisions

which have been collected and cited in the memorandums heretofore presented, and the findings of fact and conclusions of law that I have relied upon, it is not necessary that this court make a finding that the plaintiffs are correct or were correct in the commencement of their suit in order for them to have an allowance of attorney fees, if it is a true class action, and if they are entitled to litigate. [577]

Mr. Angell: It is not our position that if, assuming legally they were entitled to receive interim allowance for attorney fees, and assuming the court had jurisdiction in this case, that the court would have to determine the issues in the case to make any interim allowance. These affidavits are in response——

The Court: Is it your position that I have to make a decision on the merits?

Mr. Angell: Certainly not, your Honor. You would not have to. These affidavits are not filed for that purpose. These affidavits are to deny facts stated, which we believe to be entirely immaterial to the question of interim allowance of attorney fees, but we are not going to have them undenied in this record.

Mr. Works: There you have it on both sides. I will renew the motion to strike.

Mr. Angell: If they strike our affidavits then we ask that the affidavits to which they are responsive be stricken also.

The Court: In so far as they apply to the motion for attorney fees?

Mr. Angell: Yes.

The Court: It looks to me like that makes good sense. Do I have to read them all before I strike them?

Mr. Angell: If they are stricken, let me ask that they [578] be stricken for all purposes and not the reservation suggested by Mr. Chapman that these affidavits, by filing them, we have submitted to the general jurisdiction of the court. They were submitted solely for the purposes of this motion, and that is the only thing they are in here for. If our affidavits are stricken, then we ask the affidavits to which they are a reply be stricken also.

The Court: What are those affidavits to which they are a reply?

Mr. Fitting: If the court please, there is an affidavit of J. Howard Edgerton and one of Tracy Skelton which was filed, I believe, by Mr. Gilbert.

The Court: Just a moment. When was the affidavit of J. Howard Edgerton filed?

Mr. Fitting: That was filed by Mr. Gilbert about March 15th.

Mr. Gilbert: Not Edgerton.

Mr. Fitting: Excuse me. That is Tracy Skelton. Tracy Skelton's affidavit was filed about March 15th by Mr. Gilbert.

The Court: And Edgerton?

Mr. Fitting: And Edgerton's was filed on the same day I think by Mr. FitzPatrick and O'Melveny & Myers.

The Court: That is, the affidavit of Edgerton?

Mr. Fitting: Yes, J. Howard Edgerton.

Then in addition Long Beach in their opposition

or their [579] response incorporated their response which was, as I recall it, served in court on one of the hearings, on February 27th at the hearing when there was a response filed and served by Long Beach, incorporating the Tenth Intermediate Report of the Select Committee to Investigate Executive Agencies, which was the report on the merger of the banks and the conservatorship.

The Court: What else do you want to strike?

Mr. Fitting: Then there was some testimony, and in those affidavits in addition there was some discussion, of these spot checks and the purposes of these spot checks. Those spot checks are tied in to them also.

The Court: There was some testimony as to spot checks?

Mr. Fitting: Yes.

The Court: Who testified to that?

Mr. Fitting: I think it was Mr. Skelton who testified.

The Court: Well, the affidavit of Wyman is the one that goes to that, is it not, the affidavit of Wyman dated the 17th of March?

Mr. Fitting: Yes, that covers it. The Divers affidavit of March 18 also deals quite specifically with that. Mr. Fahey's affidavit of March 18, 1950, deals with that, and Mr. Ammann's affidavit deals with that.

The Court: Mr. Skelton was produced here and testified.

Mr. Fitting: Yes. [580]

Mr. Gilbert: Yes, he did.



The Court: What other affidavits?

Mr. Fitting: Mr. Berry and Mr. FitzPatrick, I believe, in their affidavits also deal with this spot check.

The Court: Mr. FitzPatrick's affidavit was filed in reply to somebody else's affidavit, was it not?

Mr. Fitting: Yes, in reply to Ammann's affidavit.

Mr. Angell: And Ammann's is filed in reply to Mr. Berry's.

Mr. Works: May I make a suggestion? Everybody seems to agree that these affidavits we are discussing now have no relevancy as far as the attorney fees applications are concerned.

Are you gentlemen willing to stipulate that these affidavits may remain in the file but they need not be considered by his Honor in connection with the attorney fees applications, and then if Mr. Chapman wants to go on with his motion after that, that is up to him.

Mr. Angell: No, we will not so stipulate.

The Court: You mean you want to withdraw them after they are filed?

Mr. Angell: We don't want to withdraw them.

The Court: That is all he asked you.

Mr. Angell: We will not stipulate to withdraw the affidavits. [581]

The Court: He did not ask you that, he asked you if you would stipulate that they may not be considered by the court, the affidavits which have been mentioned up to now will not be considered by the court, in connection with the application for attorney fees.



Mr. Angell: I wouldn't enter into that stipulation at this point.

Mr. Works: I wouldn't ask you for it if it wasn't for the fact that I understood you to say a moment ago that they were not material to the attorney fees applications.

The Court: That is correct. That is what you stated.

Mr. Dusenbery: If the court please, with respect to the affidavits that were filed here by some of the witnesses for the moving parties, as I recall there are portions of those affidavits——

The Court: They were not witnesses.

Mr. Dusenbery: Well, affiants.

The Court: They were affidavitors.

Mr. Dusenbery: Very well. I think that is a good word too.

Anyhow, there are portions of those affidavits that do relate to the attorney fees and the matters directly connected with it.

There are other parts of it that go to the merits of the case. Now we have difficulty there I think in apportioning [582] the parts of those affidavits that pertain to the issues here and those parts which would be proper to consider I think only on a trial of the case on the merits.

Mr. Works: If you will pick them out, Mr. Dusenbery, I will stipulate that they may be considered, those parts.

Mr. Chapman: I wonder if I may say a word. I have been waiting quite a little while here.

The Court: Let us see if Mr. Fitting has given

all the affidavits now which Mr. Angell says are immaterial and filed on behalf of the movants or not filed by this side of the table.

Mr. Fitting: Affidavits that raise questions on the merits.

However, I want to make the Government's position clear. As discussed on page 3 of our opposition, it is the Government's contention of course that the allowance of attorney fees is dependent upon the successful prosecution of the litigation.

Mr. Angell: And I want to say that that is our position too. I do not mean to say that there was nothing in these affidavits sought to be stricken as not material even though this were a proper application for allowance for interim attorney fees, nor do I mean to be understood as saying that we do not raise the question and stand on the proposition that, first, the court lacks jurisdiction to make any such allowance [583] and, secondly, that they cannot be allowed under the law because there is no provision in a case of this kind for the allowance of interim attorney fees.

The Court: In so far as the position of the Government is concerned, that the power of the court in this case to make allowance of attorney fees is dependent upon the success of the litigation, I have heretofore upon various occasions held to the contrary, and I adhere to it, and in that connection I think I am supported by a plethora of authorities.

Mr. Angell: The San Francisco Bank takes the same position as the Government in that.

The Court: So it does not seem to me that these

affidavits that go to the merits of the situation have any place for consideration here. I have just granted at one or two of them, and it would seem to me that they are just arguments made in justification of some action which has been taken in the past. I do not say that as to all of them.

Mr. Chapman: Mr. Fitting, have you concluded listing the affidavits?

Mr. Fitting: I was going to say something about listing the affidavits.

I am not anticipating a motion to strike the affidavits——

The Court: You have a motion to strike them, have you not? [584]

Mr. Fitting: No, sir, we have a motion to strike their motion.

The Court: A motion to strike their motion?

Mr. Fitting: Yes.

However, I am not certain that I have listed or discussed or pointed out all the places or all the affidavits and all the places in the evidence where the merits are discussed.

Mr. Works: Mr. Fitting, may I say a word? As I conceded a few moments ago, you are certainly entitled to notice on such a motion, and in view of that situation I will withdraw our motion to strike these affidavits and try to get around it in some other way by having your Honor released from having to read them at this time.

The Court: If they are all in here I will have to read them, and I have a lot of other things to do, and I do not know when I will be able to get

around to reading them before I can pass on your motion for attorney fees. And even after I read them all I may strike them on my own motion. But I do not know when I am going to get at it. You are anxious to get your matter of the decision on attorney fees, so it would seem to me that we should cut out all the underbrush which is, of course, the great problem in this case all the way through in trying to decide any phase of the litigation. Everybody wants to bring in every phase, and all the time I have been up against the proposition of trying to keep on the beam in [585] the matter that is under consideration.

If you want to throw out these affidavits and motions in here, that is your privilege, but it is my duty if I read them through and think they are not material, to order them stricken. Now if you do not want to make a motion to strike——

Mr. Works: My hands are tied there. They are entitled to notice.

Mr. Bishop: Before we proceed further, I would like to point out for the record that this door was opened up by our opponents, not by us. The minute you file a complete report on a congressional hearing that covers many of the phases of this case, and particularly in view of the court's——

The Court: I can take judicial notice of it whether it is filed or not. Are you going to file affidavits against everything of which I can take judicial notice?

Mr. Bishop: Well, your Honor had just previous



to the filing of that document that contained that congressional report, taken us to task that we had no denials on file here, and in view of that ruling we could do nothing else but attempt to respond to everything that was here.

Mr. Chapman: I think it is quite apparent, if I might make the point about the order you made, about when an affidavit should be filed. You required all filings in your order to be in at a certain time.

The Court: Yes, and they came down and got some extension. [586]

Mr. Chapman: And that extension was only to apply to two affidavits which had been filed upon them later—one was Edgerton's and the other was Berry's—and the hundred pages do not reply to those matters. They go into other things which had been filed for weeks.

Not only that, the material that they have filed is stale. It has been in their hands for 11 or 12 months. They have had every opportunity to present it to the court before.

The Court: That is all a very fine argument in support of a motion to strike.

Mr. Chapman: I don't want to strike it from the case generally because I think it has to do with jurisdiction, but I would like to see it go out from the question of attorney fees.

The Court: Do you move to strike it in so far as the question of attorney fees is concerned?

Mr. Works: I will request that the court strike it from consideration in connection with the motion



for attorney fees on the court's own motion. Your honor can pass on the materiality just as well now as any other time. As far as I am concerned, they are entitled to notice of motion.

The Court: I can order shortening time to right now.

Mr. Chapman: That is how they got their extension.

Mr. Fitting: What we would like is an opportunity to [587] pick out what we would like stricken too.

Mr. Angell: That is the evil of it, your Honor. If there is a motion to strike we would have to study these affidavits to which these were filed in reply and ascertain what parts of those affidavits should go out.

The Court: Well, in looking at the affidavits here, gentlemen, I realize that all of you are entitled to represent your clients in the way that you think is necessary with complete protection of their rights. But again I want to emphasize that in this case every time anybody comes into court on anything everybody tries to bring in all the issues on the merits. And these affidavits that I have glanced at here, as I have had to hurriedly do during this discussion, they go to the case on the merits and they do not go to the question of whether or not there are allowable attorney fees.

In so far as your position that they must be successful to be entitled to attorney fees, it does not make any difference in support of your legal position whether or not you are able to show that it is

meritorious or not meritorious if it is dependent upon ultimate success, because obviously there is no ultimate success.

Mr. Angell: On that particular point, that is true.

The Court: So I would like to get something here to decide. It looks to me like I certainly am not called on at this time to decide the merits of the case. [588]

What is the present status now? You have moved, Mr. Chapman, to strike the affidavits of Fahey of April 19, 1949, and March 8, 1950, of Ammann of March 15, of Wyman of April 19, 1949, and March 17, 1950, of Divers of March 18, 1950; of Strecker of April 22, 1949, and of Bogardus of March 17, 1950, in so far as they are to apply to or be considered in connection with any application for attorney fees now pending before the court. Is that your motion?

Mr. Chapman: On that limited basis, your Honor, yes; with this reservation, that we want those issues presented by those affidavits decided by you—they have been presented to you by these people—but not on your present hearing on attorney fees.

Mr. Angell: We object to that.

The Court: If they are stricken in so far as this hearing is concerned, and I have before me a motion for attorney fees, I have nothing else before me.

Mr. Chapman: Then I cannot make that motion, your Honor, because I feel what they have done is bring before you of their own volition issues we

have been trying to get them to submit here for nearly four years. I think that they have made available to us by these filings remedies in your ordering them to come here and testify which might not otherwise have been available. And while I want to see the attorneys paid, I don't want in any way to prejudice the main case when [589] someone inadvertently or genuinely has submitted matters to you for ultimate decision.

The Court: I will strike the affidavit of Fahey, of Ammann, of Divers, of Wyman, of Strecker and Bogardus on the ground that there is no showing before this court that they cannot be made to come here and testify at this hearing. It is stricken in so far as the hearing on the motion for attorney fees is concerned.

Mr. Fitting: Might we move to have stricken from the record all the other affidavits or portions of the testimony that tend to prove or disprove any of the——

The Court: In so far as the testimony of Tracy Skelton is concerned, he was here and testified. I ruled at that time on the question of the materiality of his testimony, and it was admitted.

Mr. Angell: For the record, the San Francisco Bank joins in the motion to strike those affidavits.

The Court: The affidavit of Ammann is filed March 14th, the one that I refer to, and is dated March 9, 1950.

Now I am looking for the affidavit of Edgerton.

Mr. Fitting: That would be filed the 14th or 15th also.

The Court: Who filed this affidavit? Richard FitzPatrick?

Mr. FitzPatrick: Yes.

The Court: What is the materiality of Edgerton's affidavit [590] to the application for attorney fees? Can you tell me quickly so I will not have to read it through?

Mr. FitzPatrick: I don't think there is any materiality as to the application for attorneys' fees, your Honor. It was in answer to immaterial allegations raised in the affidavits of Riordan and Moore.

The Court: Who is Riordan?

Mr. FitzPatrick: An official of the Federal Home Loan Bank Board.

The Court: What date was his affidavit filed?

Mr. FitzPatrick: I don't have the filing date. The date of the affidavit was September 21, 1949. It was attached to the memorandum in opposition to motions for orders directing payment of attorney fees.

The Court: Filed when?

Mr. Fitting: Filed September 23, 1949.

The Court: The affidavit of Riordan?

Mr. Fitting: The affidavit of Riordan.

The Court: And the affidavit of Moore, too?

Mr. Fitting: And Moore was filed September 23, 1949, in our original opposition filed at the time that the motions were first filed.

The Court: As I see Edgerton's affidavit, it all goes to whether or not the members of the Bank wanted to dissolve or did not want to dissolve. [591]

Mr. FitzPatrick: Yes.



The Court: Is that what Riordan's and Moore's affidavits went to?

Mr. FitzPatrick: Moore's affidavit had to do with the organization of the Federal Home Loan Bank of Los Angeles and that no hearing was requested by anybody in connection with its consolidation with the Portland Bank and attached a copy of the certificate of the organization of the Los Angeles Bank.

Riordan's affidavit had to do with who owned the capital stock of the bank, in what proportion and what was the book value of that stock.

The Court: In other words, they both go to the merits?

Mr. FitzPatrick: In my opinion, yes.

The Court: The affidavit of Moore is stricken on the court's own motion, as is also the affidavit of Riordan, both of which I have just now located. That is to say, the affidavit of J. Francis Moore, filed in this court on September 23, 1949, which affidavit is dated the 21st of September, 1949, and the affidavit of Ernest E. Riordan, filed in this court on September 23, 1949, and the affidavit is dated the 20th of September, 1949, on the ground that they are immaterial.

On the court's own motion, the affidavit of Edgerton, dated the 13th of March, 1950, and filed March 14, 1950, is [592] stricken on the same ground, and they are stricken in so far as they apply to or are to be taken into consideration in connection with the pending application for attorney fees.

Mr. Fitting: Now, if the court please, there is



also an affidavit by Mr. FitzPatrick filed January 31, 1950.

The Court: That is filed in response to Ammann's affidavit, is it not?

Mr. Fitting: No. This was filed before Ammann's affidavit was filed.

The Court: Filed before? Do you know when Ammann's affidavit was filed?

Mr. Fitting: In March. This was filed January 31, 1950. It deals primarily with what Mr. Keller has to say about the consolidation of the banks.

Mr. FitzPatrick: It, too, was filed in opposition to the affidavits of Moore and Riordan which your Honor has already stricken.

The Court: As immaterial.

Mr. FitzPatrick: As immaterial to this present application for fees.

Mr. Works: Do you move to strike that affidavit, Mr. Fitting?

The Court: Do you move to strike the affidavit?

Mr. Fitting: If our affidavits are stricken then——

The Court: Do you move to strike it? [593]

Mr. Fitting: Yes, I do.

The Court: What is the date of the affidavit, and when was it filed?

Mr. Fitting: It was filed January 31, 1950.

The Court: That is the affidavit of Mr. FitzPatrick?

Mr. Fitting: Yes. The date of the affidavit is January 5, 1950.

The Court: It is stricken on the ground that it

is immaterial in so far as the application for attorney fees is pending and in any consideration in connection with them.

Mr. Fitting: Then there is an affidavit of Mr. Gregory filed March 15th, also dated March 15, 1950, dealing with roughly the same material, or with some of the same material covered in the other affidavits.

Mr. Chapman: I want to be heard on that, your Honor.

The Court: You may have to talk pretty fast.

Mr. Chapman: Then I had better start now.

The Court: Wait until I find the affidavit.

I see here in the beginning you refer to an affidavit of Bogardus. The affidavit of Bogardus is stricken so I cannot see, if this were filed merely to counter things that were stated in any of the affidavits which I have stricken, that it would be material.

Mr. Chapman: It happened, your Honor, to contain exhibits which are material to the attorney fees question, particularly [594] the claim of estoppel which has been seriously raised here, and in view of the Supreme Court's decision when we were back there two or three years ago that it is an important question. It contains affirmative evidence that the San Francisco Bank is the party estopped and not the shareholders, as they contend. It has their own dividend checks.

The Court: They contend that the shareholders are estopped from what?

Mr. Chapman: From questioning the existence

of the San Francisco Bank or from having any lawsuits or from having any attorney fees.

The Court: You do not have any application for attorney fees pending.

Mr. Chapman: In a class action, your Honor, everybody's application affects everybody. We have \$600,000 of our money supposedly in stock in the San Francisco Bank. Any attorney fees paid to anybody about 8 cents to 10 cents on the dollar, or some fraction, come out of our pockets.

Mr. Angell: They are not asking to pay less, they are asking to pay more.

Mr. Chapman: If we want to help pay something to get our bank back, that is our privilege. We have joined in the motion for granting attorney fees instead of resisting it, so in part at least it is our motion. These exhibits are highly material to the question of estoppel which has been serious [595] throughout this case. They are not merely a counterpoint, they are an independent point on their own and they were filed in time within the court's own order without an ex parte extension. I think for the exhibits alone it is material that they stay in the affidavit.

The Court: Very well. I will strike all of the affidavit except the exhibits.

Mr. Chapman: You have to identify them and explain them in the affidavit.

The Court: They are dated on their face. They appear to be what they are.

Mr. Angell: That affidavit, your Honor, was filed in response to Mr. Bogardus' affidavit.

Mr. Chapman: On the contrary, I filed that affidavit and it was filed independently in the time given by the court. It refers to Bogardus' affidavit, but it is not merely a responsive affidavit.

The Court: The affidavit of Gregory filed March 15, 1950, and dated March 15, 1950, is stricken as being immaterial on the application for attorney fees or any matters to be considered in connection therewith, except that the exhibits attached to that affidavit, which are photostatic copies of various documents——

Mr. Chapman: Exhibits B and C, your Honor?

The Court: A, B and C will remain for consideration in [596] connection with the assertions of estoppel or counter-estoppel, if there is such a thing as counter-estoppel.

Mr. Bishop: Your Honor, I would like to be heard on that.

There are two affidavits of Mr. Bogardus here and Mr. Chapman's affidavit was filed in response to an affidavit that we filed in the latter part of February of 1950 or early in March.

Mr. Chapman: I deny that statement. I filed my affidavit and I know why it was filed. It is not entitled in response to anything.

Mr. Bishop: Well, anyway, we had filed an affidavit previously of Mr. Bogardus in which we refer to the number of shares held by——

The Court: Just a moment now. I struck the affidavit of Bogardus of March 17, 1950. I was under the impression that that was the only affidavit that Bogardus filed.



Mr. Bishop: That is not correct.

The Court: That is not correct?

Mr. Bishop: No, sir. There are two affidavits of Mr. Bogardus. I am now talking about another affidavit of Mr. Bogardus that was filed at an earlier date.

The Court: And which is not stricken?

Mr. Angell: That is right.

Mr. Bishop: And that is what we assumed, and I am not [597] trying to bind Mr. Chapman at all.

The Court: Very well. That being the case, if the affidavit of Bogardus of the earlier date was not stricken, this goes to matters which are set forth in that affidavit, so the affidavit of Gregory will remain.

Is that clear? I will reverse the order I just made striking Gregory's affidavit and leave it in together with its exhibits.

Mr. Bishop: Then in view of what has transpired, I would like to have our motion to strike Mr. Chapman's motion to have these parties appear and testify heard, and I would like his motion stricken because he has admitted that it had no materiality to these proceedings. Therefore it cannot remain on the files and records of this motion.

The Court: The motion of Mr. Chapman and the motion to strike it will go off calendar.

Mr. Bishop: In that connection, at this time I would like to ask the court that Mr. Noon be discharged in connection with the subpoena heretofore issued calling for our records to be used at this trial or this hearing in connection with attorney



fees or expenses, because it has no materiality what we spent or didn't spend.

The Court: I will defer ruling on that. I think it does have.

Mr. Chapman: I certainly want to be heard before my subpoena [598] is discharged, your Honor.

The Court: What you spent or what you did not spend I think is material.

Mr. Bishop: Again I urge that he is not the person claiming fees here.

Mr. Chapman: We joined in their motion.

The Court: There was an affidavit of Mr. FitzPatrick filed in response to Mr. Ammann's affidavit which I struck, was there not?

Mr. Gilbert: Yes, there was, your Honor.

Mr. Works: Yes.

The Court: What did we do with that affidavit?

Mr. Fitting: I think that should be stricken if Mr. Ammann's is stricken since it answers Mr. Ammann's. That was filed about April 6, I believe—no, about March 31st.

Mr. Gilbert: March 30th, I think, was the filing date of Mr. FitzPatrick's affidavit to which Mr. Fitting now refers, and that was in response to Mr. Ammann's affidavit of March 15, 1950.

The Court: I have stricken Mr. Ammann's affidavit of March 15 as not being material, and also on the further ground, as I indicated, that there is no showing that these parties are not able to be in court and testify.

Mr. Gilbert: In connection with those two affidavits, your Honor, it is Mr. FitzPatrick's personal

wish and request, [599] because of the matters contained in Mr. Ammann's affidavit with respect to this question of conduct, and that although he has denied those charges and explained them in his affidavit, he nevertheless has asked me to tender him as a witness at this time in connection with that conduct in the event your Honor should desire to ask him any questions about it or in the event any counsel should desire to cross-examine him in connection with it.

Mr. FitzPatrick: I would like to join in that statement.

The Court: I understand that Mr. FitzPatrick's affidavit is made in connection with some statement contained in Mr. Ammann's affidavit to the effect that Mr. FitzPatrick went out and solicited business among the home loan associations.

In the first place, such a statement is wholly immaterial and incompetent. In the second place, in Ammann's affidavit it is already stricken because the affidavit is immaterial and because there is no showing before this court that Mr. Ammann cannot come here and testify at this hearing. I think therefore that any response in connection with it should also be stricken, and I do not think it is material whether Mr. FitzPatrick went out and saw home loan associations in connection with his application for fees at this time or not.

Mr. Fitting: Now, if the course please, that gets again to the question of the spot checks. In their various affidavits [600] and in their testimony they contended that the spot checks were for the purpose

of intimidation and of seeing what associations were paying, whether associations were paying money or planning to pay money to defend suits. Ammann's affidavit sets up the purpose of the spot checks from the point of view of the Board and from his point of view.

The Court: I have just stricken it.

Mr. Fitting: Now it seems to me that then the spot check testimony perhaps should be stricken because certainly if there is testimony as to spot checks we should be permitted to put in testimony as to what the spot checks were for.

The Court: Bring Mr. Ammann here.

Mr. Angell: I call your Honor's attention to the fact that under rules on motions we are not required to bring every witness here, but the motions under the rules should be heard on affidavits, and we have filed those affidavits. So I wish to call to your Honor's attention that under the rules we are not required to produce a witness.

The Court: This is an adversary proceeding on the application of attorney fees. My rulings will stand.

Are we ready now to get down to what we came here for?

Mr. Angell: I would like to move to strike the affidavit of Charles Berry of February 27, 1950. I do not think it was stricken. That has to do with spot checks. It also has to do with being present at the testimony of witnesses before the [601] congressional hearing.

The Court: February 27?

Mr. Bishop: It is a 2-page affidavit prepared by Mr. Gilbert.

The Court: You mean filed by Mr. Gilbert?

Mr. Bishop: I don't know who prepared it.

Mr. Gilbert: The purpose of that affidavit, your Honor, or one of them, was to show that the seizures in both instances, of the Long Beach Federal and the Federal Home Loan Bank, were made for the reason that those two organizations appropriated funds for legal counsel and expenses to fight the seizure.

Mr. Angell: Now that is just the evil of this whole thing, your Honor, and why we object to this procedure. Here we have counsel saying that the purpose of these affidavits was to show the purpose of what he calls seizures, when those officials of the Board were merely doing their duty under the Act.

Now if the purpose of that was to do what Mr. Gilbert says it was to do, we have a right to have those affidavits in here to show in this proceeding that that wasn't the reason for either dissolving the Bank or appointing a conservator.

Now Mr. Gilbert has put his finger right on the evil of this whole procedure, and we will meet ourselves coming back [602] if we didn't deny that that was the purpose of it.

Mr. Gilbert: All we did in that affidavit was to quote the testimony under oath given at the congressional hearing that that was the reason.

The Court: If that is the case, I will strike the affidavit because I can take judicial notice of the testimony under oath.



Mr. Angell: Of course, your Honor, it is our position that any testimony before the congressional committee, even if it can be taken judicial notice of for any particular purpose, cannot be taken judicial notice of for any of the purposes of this hearing. That was not a trial. A congressional committee is not a court, and testimony taken before that body is not in evidence before this court in this proceeding.

The Court: I will take judicial notice of it in so far as it is material. I can take judicial notice of hearings before Congress, reports to Congress, public hearings.

Mr. Bishop: Without waiving the former point, if the court is going to take judicial notice of that famous, or infamous document—I don't know which to call it—then by the same token we have a right to rebut it, and that is why none of our affidavits can be stricken out.

The Court: The affidavits are stricken on the ground I have heretofore indicated, and I will take judicial notice of the hearing and of the report and of the contents of the matter [603] in so far as they are applicable, or of any other congressional hearing.

Mr. Fitting: I wonder if your Honor could indicate to us sometime what portions of the report you do rely on so that we might have an opportunity to rebut that. It is hard to tell how to meet the report if we don't know what parts you are relying on.



Mr. Angell: The San Francisco Bank joins in that request.

The Court: I am not going to sit down and say, "I take judicial notice of line 5, page 16, these five words, and not of the next ten" at all. I take judicial notice of the whole thing in so far as any portion of it is material or applicable to this proceeding.

Mr. Fitting: If the court please, how can we meet it then except by filing affidavits meeting the whole thing, which is just what we tried to do here.

Mr. Angell: In that respect, I wish to call your Honor's attention——

The Court: I do not take judicial notice of the truth or falsity; I take judicial notice of the report and its contents, and the fact that there were hearings on such-and-such day and that somebody said so-and-so. But I do not take judicial notice of the fact that he was then telling the truth or was not telling the truth. For that reason I can see [604] no necessity for allowing anybody an opportunity to deny or to controvert that.

Mr. Bishop: Then your Honor, by the same token, I think that our affidavits contain information that you must take judicial notice of because almost all of the information therein contained is actually and almost in every instance a report of one official to another official, even going to the President of the United States.

The Court: If they sit down and write letters to one another exculpating themselves from any

violation of the law or saying that they were doing everything in compliance with the law, if you call my attention to it I will take judicial notice of it but not of the truth or falsity of it.

Mr. Angell: Then I would say you are indulging in a presumption of wrongdoing against a public official.

The Court: I am not doing anything of the kind.

Mr. Dusenbery: There is some of these proceedings with respect to the affidavits that go a little bit beyond my previous experience, and in order to keep the record straight and in the interest of clarity, I now move the court that all of the affidavits filed in support of these petitions for attorney fees that have not already been stricken by the court be now stricken on the ground that there is no showing with respect to those affidavits that the individual affiants could not be produced to testify. [605]

Mr. Chapman: I oppose that motion, your Honor.

Mr. Gilbert: Does that include our personal affidavits setting forth our services?

The Court: I think when the matters were presented by Mr. Works he stated that somebody was present to testify but if counsel did not object that the affidavit would stand. I think you filed an affidavit then.

Mr. Works: Mr. Fussell and Mr. FitzPatrick are present in the courtroom right now.

The Court: And they were present at the time, if my recollection serves me correctly.

Mr. Works: Surely.

The Court: And you proffered them as witnesses, if my recollection serves me correctly, and everybody agreed that their affidavits might stand and that they would testify to the same effect. Did you not, or is my recollection wrong?

Mr. Works: I don't recall whether there was a direct proffer, but they were here in the courtroom and these gentlemen may cross-examine them now if they desire.

Mr. Angell: Which witnesses?

Mr. Works: If these gentlemen want Mr. Fussell and Mr. FitzPatrick to get on the stand and repeat what they said in their affidavits, they are welcome to it.

Mr. Angell: We do not desire that.

The Court: The affidavits were received in evidence and [606] there was no objection at the time.

Mr. Works: And Mr. Morrow testified upon the basis of those affidavits as to what the facts were.

The Court: Very well. Are we down now to where we can start?

Mr. Fitting: I just want to make sure of one thing. Was Mr. Skelton's last affidavit stricken, your Honor? That was the one filed March 14th or 15th.

Mr. Angell: Was there a ruling on the motion to strike the Berry affidavit?

The Court: Mr. Skelton was here and testified, was he not?

Mr. Gilbert: Yes, he did, your Honor.

Mr. Angell: And he also filed an affidavit of March 14.

The Court: It was subsequent to that date that he testified, was it not?

Mr. Fitting: No, he testified I believe on February 27 or February 28th.

The Court: I think in view of his testimony that the affidavit is merely cumulative.

Mr. Gilbert: I think so too.

The Court: And the affidavit will be stricken in so far as the application for attorney fees is concerned on the ground that it is cumulative and redundant.

Mr. Angell: Was there a ruling on the motion to strike [607] the affidavit of Mr. Berry of March 15, 1950?

The Court: Yes, I ruled on it. I have forgotten how I ruled.

Mr. Gilbert: It was stricken.

Mr. Angell: Thank you.

The Court: Very well. Now do we know what we are going to talk about?

Mr. Works: I think so, your Honor. I have two affidavits here——

The Court: I think we will have a short recess.

(Short recess.)

The Court: Mr. Works.

Mr. Works: Your Honor, if I may resume my famous last words this morning, when all counsel were good-natured they agreed we might file two



supplementary affidavits which do go to the question of attorney fees, namely, showing the time spent by Mr. FitzPatrick and by our office with reference to the Shareholders' Protective Committee or committees, and the allocation which has not heretofore been made in the principal affidavits filed.

The Court: If there is no objection they may be filed.

Mr. Works: Thank you, your Honor.

Mr. Angell: These were just presented to us at the recess, your Honor, although Mr. Bishop was served I believe late last night. This is the first time I have seen them. [608]

May we have time to respond to anything which is in there which we deem necessary to respond to?

Mr. Works: As far as I am concerned, you may.

The Court: Let me see them.

(The documents referred to were passed to the court.)

The Court: This is the affidavit of Paul Fussell and the affidavit of Mr. FitzPatrick.

Do you offer them as witnesses at this time?

Mr. Works: I tender those two gentlemen as witnesses at this time and ask that the affidavits be received in evidence.

The Court: As their direct testimony?

Mr. Works: As their direct testimony; yes, your Honor.

The Court: Any objection?

Mr. Angell: No objection.



The Court: Very well. It is so ordered.

Do you wish to cross-examine them?

Mr. Angell: Yes, I would, your Honor. I have just a couple of questions.

The Court: If you want to look through those you can cross-examine them this afternoon.

Mr. Angell: Thank you, your Honor. If we can reserve it until this afternoon we might save time.

Mr. Works: Now we have another offer on behalf of both applicants with relation to protests from other associations with regard to the San Francisco Bank. [609]

Mr. Gilbert: These were heretofore requested, if your Honor will recall, and we will offer at this time—I think there is no objection to the photostatic copies of the originals which have been supplied to us to the inspection process.

Mr. Bishop: It was agreed, your Honor, that photostats could be introduced in lieu of the originals.

The Court: Legible photostats?

Mr. Gilbert: Yes, they are.

Mr. Bishop: I didn't guarantee them.

Mr. Chapman: They were made by the special master.

Mr. Gilbert: They are legible.

Mr. Bishop: Your Honor, I would make this statement: You only have to read about one of them because they are all substantially the same. There are some slight variances, however.

Mr. Gilbert: I think there are perhaps as many as a dozen which did not use the form.

The Court: These were produced by the San Francisco Bank pursuant to a request for inspection?

Mr. Gilbert: Yes, your Honor.

Mr. Bishop: That is correct.

The Court: And these are the documents produced as to the protests and the reservations of right which counsel for the movants contended were made? [610]

Mr. Bishop: By that limited number; yes, sir.

The Court: Were made on or about the time of the taking over of the Los Angeles Bank and the establishment or creation of the San Francisco Bank.

Mr. Gilbert: There are 79 letters in the ones I handed your Honor, plus the reverse side in a few instances. Some of those letters are duplications. I think there were 34, is that correct?

Mr. FitzPatrick: Approximately.

Mr. Gilbert: Some 34 separate associations. The bulk of the letters follow the form of the resolution and letter which was read at the time that Mr. Skelton was on the stand.

The Court: Very well. These will be received in evidence. It is not necessary for me to read all of them?

Mr. Angell: May we have our objection before they are accepted in evidence?

The Court: Yes.

Mr. Angell: It is our understanding that Mr. Bogardus' affidavit was stricken.

Mr. Bishop: Not the first one.

The Court: Not the first affidavit.

These will be received as movants Wilmington's—how were we numbering those?

Mr. Gilbert: They were numbered by date, your Honor. That is, they have been up to now. [611]

Mr. Bishop: No, he means your next exhibit number.

The Court: The clerk can get the number later.

Mr. Works: May that be a joint exhibit?

The Court: Very well—on behalf of the movants in connection with the application for attorney fees, no matter who it is.

(The documents referred to were received in evidence as Joint Petitioners' Exhibit No. 2-27-50-19.)

Mr. Works: We have no further evidence, your Honor.

Mr. Gilbert: I have no further evidence either.

Mr. Chapman: I would like to call Mr. Noon to the stand.

The Court: Very well.

Mr. Works: This is on the attorneys' fees?

Mr. Chapman: That is right.

Mr. Noon, I think before you go up it might help for you to take one of the books, Volume 300.

The Clerk: You were sworn before, were you not, Mr. Noon?

The Witness: Yes, sir.

## FRANK C. NOON

called as a witness, having been previously duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Chapman:

Q. What is your status with the Federal Home Loan Bank [612] of San Francisco?

A. I am vice president and manager of the Los Angeles Branch.

Q. You have in your hands a book which has been designated in the special master's proceedings as LA-300. Will you tell us what that book is, just generally?

A. The minutes of the meeting of the board of directors of the Federal Home Loan Bank of San Francisco from February 15, 1947, to December 16 and 17, 1950.

Mr. Angell: To what date?

Mr. Bishop: You mean those dates inclusive?

The Witness: February 16 and 17, 1950, inclusive.

The Court: From 1947 to 1950?

The Witness: Yes, from February 15, 1947.

Q. (By Mr. Chapman): Turning to pages 116—I think counsel may want to inspect this. Shall we bring it to the table or do you want to come up here?

(Counsel examining volume.)

Mr. Chapman: I am starting with 116 down to and including 120, the closing of the meeting, and

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that deals with the meeting of April 22 and 23, 1949.

The Court: Mr. Chapman, counsel are examining the book there. Do you intend to interrogate the witness concerning other matters which counsel would have the right to examine [613] before you talk to him?

Mr. Chapman: I do, but I am going to have to take it one step at a time and it may be necessary for him to identify paragraph by paragraph unless they are willing to concede the genuineness of the book.

The Court: I see it is a quarter of 12:00 here, and if you could just designate now and then counsel during the noon recess could read all of the different things that you expect to examine the witness about so they would be prepared to proffer their objections, if they have any.

Mr. Chapman: I am not certain that I can undertake that. I can give them a list of some. But one leads to another, and if certain things go in I may not need to go any further. If others do, I may have to go on from there.

The Court: My point is that if you can give them a list of the things that you contemplate that you might touch upon, then they can read them.

Mr. Chapman: I can do that.

Mr. Dusenbery: The first designation is quite extensive. It covers several pages.

The Court: Just read them off now and one of



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you can take it down in pencil. They are all in that book, are they not?

Mr. Chapman: No, your Honor. Some are in the various exhibits books. This is the minute book and this refers to [614] exhibit books at various places.

The Court: Very well.

Mr. Chapman: In the minute book, which is LA-300, pages 165 and those adjacent thereto, dealing with the approval by the directors of the expenses of the acting president.

Then in LA-96, which is one of the exhibit books——

The Court: That is here in the courtroom?

Mr. Chapman: That is here in the courtroom.

The Court: Will you identify it now, Mr. Noon?

Mr. Angell: Have those minute books a number other than the special master's hearing number?

Mr. Chapman: No, but they have the special master's number on the flyleaf.

I would like the record to show that all references that I make to 96 or 300, and so forth, are references to a stamp in the flyleaf of the book which reads: "Mallonee v. Fahey, 5421-PH, Exhibit LA-96 for identification, Ronald Walker, Special Master."

The Court: In other words, those numbers are the numbers assigned in the discovery proceedings.

Mr. Bishop: This same book, your Honor, for the clarification of the record, has heretofore been marked right in the trial of this case, in this court-

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room, in 5421-PH, as Exhibit G-3 for the respondents on September 16, 1948.

Mr. Dusenbery: May it please the court, in making the [615] designations it would be helpful to counsel, and I think later in introducing them, if Mr. Chapman would be specific as to the pages or the portions of the pages that he wants to offer.

The Court: He is trying to be. That is what I asked him to do. What pages in this book?

Mr. Chapman: Page 896. Let me turn to the page and I will try to give you the heading. Or was it your Honor's intention to have the witness identify all the books first?

The Court: No. My purpose is to give counsel an opportunity through the noon recess to go over them.

Mr. Chapman: Page 896, which is a certified copy of a resolution of the Home Loan Bank Board dealing with the budget and approving attorney fees and expenses in the litigation.

Also page 946, which is a proposed budget for the calendar year 1949, and likewise contains items dealing with attorney fees and expenses of the litigation and similar items.

LA-97 is next. Mr. Noon, will you get that?

The Court: What is the number of the minute book you gentlemen have, LA-300?

Mr. Chapman: No, it is not in there.

Page 1083, which contains three mimeographed sheets attached, headed "Proposed Budget for the Calendar Year 1950," which in part also deals with

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attorney fees and expenses of [616] litigation.

And in LA-300, page 111, headed, "California Litigation," which is continued over to page 112.

Also on page 115, "Attorneys' Trip to Washington, D. C.," is the heading on that, and the date of the meeting is April 22 and 23, 1949.

And 116 I believe I started with on that designation.

There are two others, your Honor, but I will have to check them in the books. I had to conclude my examination Wednesday evening. Even then they stayed over half an hour for me. These books only became available late Tuesday.

The Court: That is all the designations you can make now?

Mr. Chapman: That is right. There will be two or three, just a very few more, after the recess is over when I can have a little more time on some notes that aren't complete here.

Now does your Honor want me to go ahead with page 116 in LA-300 that we started on?

The Court: No. I would like to get some estimate of the time that will be necessary to conclude the hearing here. This is your only witness?

Mr. Chapman: Yes. But the book matters will be somewhat extensive, and I anticipate at least, from four years' experience in the past, that there may be some objections [617] from the San Francisco Bank on some of these matters. In my opinion they go to the heart of the litigation, to the jurisdiction of the court. One of the resolutions here I

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think is very much in point on that. I would say that I would be at least two hours.

The Court: I guess we will have to work tomorrow then. I have a law and motion calendar Monday and a case set for Tuesday that is entitled to go ahead because they are bringing witnesses from all over the Pacific Ocean.

Mr. Chapman: I rather anticipated that, your Honor, when the continuance was made to a Friday, and they didn't have the material for the subpoena a couple of weeks ago.

The Court: Could you go ahead at 2:00 o'clock?

Mr. Chapman: I would like to ask your Honor to recess until 3:30. This is Good Friday, I know that litigation is important, but I think there are some of us here that feel we have an even more important duty. I do not think I am the only one here.

Mr. Fitting: I would like to join in that request, if the court please.

The Court: Very well. We will recess until 3:30.

Mr. Chapman: And I offer to waive any time today or tomorrow that is available, or whatever your Honor suggests, to make up for that longer recess.

The Court: We may find a way. Recess until 3:30.

(Whereupon, at 11:55 o'clock a.m., a recess was taken until 3:30 o'clock p.m. of the same date.) [618]



April 7, 1950—3:30 o'Clock P.M.

The Court: Proceed.

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the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Mr. Works: I think it is proper, your Honor, for the record to show that Mr. FitzPatrick and Mr. Fussell have been released as potential witnesses by the other side.

The Court: Is that correct?

Mr. Angell: That is correct, your Honor, for the San Francisco Bank.

The Court: Very well.

Mr. Fitting: I didn't ask them to stay, if the court please.

The Court: Nobody asked them to stay.

Mr. Fitting: I am willing that they be released.

The Court: Do you wish to call them as witnesses?

Mr. Fitting: No, I do not.

The Court: Does anybody else wish to call them as a witness? (No response.) I take it then that they are released.

Have you had an opportunity to examine the documents referred to by Mr. Chapman before lunch?

Mr. Angell: We have, your Honor. [619]

The Court: Very well. Proceed.

Mr. Chapman: I am going to take these one at a time, your Honor, and before I address myself



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to the offer, which will have several phases, I would like you to read, starting on page 116 with the paragraph marked "California Litigation," those particular pages.

(The volume referred to was passed to the court.)

The Court: These are the minutes of the San Francisco Bank?

Mr. Chapman: That is right.

The Court: It says, "Full discussion was had between the members of the board." What board?

Mr. Chapman: That is the board of directors of the Federal Home Loan Bank of San Francisco.

The Court: Board of directors of the alleged Federal Home Loan Bank.

Mr. Chapman: Purported.

The date of the meeting was April 22 and 23, 1949. Those are very significant dates, as your Honor will recall, in the former attorneys' fees applications.

The Court: To where, to the end of the meeting?

Mr. Chapman: That is right; to the end of the meeting.

The Court: Very well. I have read it. Page 120 is signed B. A. Perham, Chairman, and Irving Bogardus, Acting Secretary. [620]

Mr. Chapman: I wish to offer into evidence pages 116, 117, 118, 119 and 120 of the exhibit designated in the special master's proceedings as LA-300.

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Before making the offer, shall we have it marked for identification here, or does your Honor wish to go ahead with the special master's designation? I would like to refer to parts of it for the next few moments.

The Court: It should take a number with relation to this hearing, these different pages.

Mr. Chapman: Will you give it a number, Mr. Clerk?

The Clerk: No. 2-27-50-20.

(The pages referred to were marked Joint Petitioners' Exhibit No. 2-27-50-20 for identification.)

Mr. Chapman: That is offered in evidence, your Honor, for several purposes——

The Court: Is there any objection to it?

Mr. Angell: Yes.

Mr. Chapman: I would like to make the purposes clear before you hear the objection.

The Court: Very well.

Mr. Chapman: The question of attorneys' fees is being resisted on the ground of the jurisdiction of the court. As your Honor will recall, in April and May of 1949 there were proceedings, including a stipulation signed by the San Francisco Bank's counsel and counsel for the Home Loan Bank [621] Board, Divers, etc. That stipulation was vacated by your Honor on an application made on behalf of defendants Home Loan Bank Board, and the vacating of that stipulation was joined in by counsel

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for the San Francisco Bank and its officers and directors.

This resolution proves the knowledge on the part of the board of directors of the San Francisco Bank and the vacating of that stipulation was an official act of the Bank and binding upon the Bank.

In vacating the stipulation there was an agreement made in the form of a letter filed with this court and called the "ultimatum letter," addressed to various counsel by the Assistant to the Attorney General, Mr. Peyton Ford. One of the paragraphs of that letter is set forth in these minutes, the paragraph which provides that all further attorney fees shall be decided by this court in an adversary proceeding. This is that adversary proceeding, and after the filing of the letter and the proceedings shown in these minutes the San Francisco Bank has submitted to the jurisdiction of this court if there were any doubt about the court's jurisdiction, as to the question of the decision of these attorney fees.

The offer is made into evidence generally of course for the entire case, but particularly on the point of attorney fees and jurisdiction.

And I would prefer, if the gentlemen care to be heard, [622] to have you take up your objections now.

The Court: Is this offer joined in by the movants?

Mr. Works: We do, your Honor.

Mr. Gilbert: Yes, your Honor.

(Testimony of Frank C. Noon.)

Mr. Angell: On behalf of the San Francisco Bank I wish to object on the ground it is incompetent, irrelevant and immaterial, doesn't tend to prove or disprove any issue in the matter pending before this court in determining the right to allow interim attorney fees to the applicant-movant; upon the further ground that the minutes show on their face that it is a confidential report of counsel to the board of directors on negotiations for a settlement, which are not admissible for any purpose whatsoever. And on the further ground that any advice given to a client by an attorney is privileged. The only way that you can convey information or advice to a board or directors is through communication to that board of directors and reporting it in the minutes. We claim it is privileged.

We also object on the further ground, as stated, it only is a report on negotiations for a settlement of the litigation, and negotiations for settlement are not admissions in any sense of the word and are not admissible as such, nor to prove or disprove anything.

Nor can they consent to jurisdiction or do they consent to jurisdiction by entering into negotiations. There would [623] be no clearer way to prevent any negotiations for settlement to go on if such were the fact.

Mr. Fitting: We join in that objection, if the court please, and on the further ground that in so far as it purports to relate what the Department of Justice has said, that it is hearsay.

(Testimony of Frank C. Noon.)

Mr. Works: I assume, Mr. Chapman, you are merely offering this document to prove the facts which are therein set forth which can be done even in the case of an offer of compromise, as I understand the law.

Mr. Chapman: That is one of the purposes, Mr. Works, but I don't believe, your Honor, that the mere presence of counsel renders inadmissible any official action of the board of directors. It may be that we are going to have to go paragraph by paragraph through this matter and where counsel are quoted as advising their clients, if they wish to raise the question of privilege to those paragraphs, it may or may not be correct.

But as the objection is now made, it is too broad because it includes matters which clearly are not privileged. Therefore, your Honor would be justified in overruling that objection in its entirety.

If you prefer to take it paragraph by paragraph on the question of privilege, that may be done.

On the question of compromise, an official act of the [624] board of directors in connection with contested litigation does not become inadmissible merely because compromise may be considered as part of the things that they have done. They have authorized by this resolution their president, then alive, Mr. Harold Holmes, to instruct counsel to do certain things. It is obvious from these minutes that counsel did just those things, and that has a binding effect upon that Bank.



(Testimony of Frank C. Noon.)

I think the objection as previously made could well be overruled in its entirety.

The Court: The objection is overruled. Admitted.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-20.)

Mr. Chapman: 'The next designation——

The Court: These had better be marked, Mr. Clerk. Have you photostats of these?

Mr. Chapman: No, there were objections made to the special master making those photostats before your Honor ruled. It was my intention, under those circumstances, to suggest that the clerk of this court make the photostats while the books are here and that the original books, after the photostats were made, could then be returned to the custody from which they were produced.

I would like to point out, however, that we are not through with the books on the question of inspection. Mr. [625] Dusenbery has told me that they would be necessary in the use of the Bank, and I had suggested that after the photostats were made of the copies that go into evidence that the books might well be returned to the Bank if they could come down on the next special master's order with a little less than two or three weeks delay when we ask for them, and I have been assured that that is possible.

I suggest that the clerk make the photostats from

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the originals here in court. Then there can be no question, as we have had before, of getting them back.

Mr. Bishop has another suggestion which he took up with me a moment ago.

The Court: Not a photostat of the whole book?

Mr. Chapman: No, only what we offer in evidence, your Honor, the three or four pages with that designation.

Mr. Bishop: My suggestion, your Honor, was that after the court had ruled on all the portions of the minute books that he deemed admissible, that we return them to the special master so that all the photostating is done and recorded and kept track of together and nobody can get hurt, because I have acceded to Mr. Chapman's wishes and permitted two microfilms of every one of these books to be taken.

The Court: It seems to me, in view of the fact that I understand the special master has a regular shop where he makes photostats, that that probably would be easier and [626] quicker and better.

Mr. Chapman: Either process, your Honor.

The Court: The clerk will have to stamp these pages, 116, 117, 118, 119 and 120.

Mr. Chapman: Yes, your Honor.

The next is LA-96, page 896. May I have that?

(The volume referred to was passed to counsel.)

(Testimony of Frank C. Noon.)

Mr. Chapman: Do you wish to give this a number, Mr. Stacey?

The Court: Let me look at it first.

(The volume referred to was passed to the court.)

Mr. Chapman: That is a resolution of the Home Loan Bank Board approving certain action with regard to counsel.

The Court: There is no objection other than your general grounds?

Mr. Angell: Just the general objection, your Honor, incompetent, irrelevant and immaterial, doesn't tend to prove or disprove any issue in the case.

The Court: Overruled. Admitted in evidence.

Mr. Works: We join in the offer, your Honor.

Mr. Gilbert: We also join.

The Court: Very well. That will be Exhibit 2-27-50-21.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-21.)

The Court: And there will be the same provision as to [627] the photostating.

Mr. Chapman: Yes, your Honor.

The next, your Honor, is on page 946. It is a proposed budget for the calendar year 1949.

(The document referred to was passed to the court.)

(Testimony of Frank C. Noon.)

The Court: I do not think this book has been identified by the witness yet.

What is it?

The Witness: May I see it?

(The document referred to was passed to the witness.)

Mr. Bishop: I would suggest, in the expedition of time, that we are willing to stipulate that these are the official books of our Bank. We don't have to have the witness identify each one.

The Court: I had the understanding somehow or other that the minute books are not complete minute books, that the minute books refer in turn to other books wherein certain files are kept, and that this is one of them.

Mr. Chapman: That is correct. This is an exhibit book.

Mr. Bishop: That is an exhibit book.

The Court: An exhibit book to the minute book, is that correct, Mr. Noon?

The Witness: Yes, your Honor.

The Court: Very well.

Mr. Westover: May we have the number of it, the special [628] master's number, so that we can refer to the preceding list?

The Court: It is LA-96. This is page 946.

The material portion here is the counsel fees and the expenses?

Mr. Chapman: I think the entire budget, your Honor, because it shows the proportion that those

(Testimony of Frank C. Noon.)

litigation expenses bear to the entire budget. That is why I offer the whole three pages.

Mr. Works: I assume, Mr. Chapman, you are not offering any of these figures to show the reasonable value of the services rendered by counsel for the Bank?

Mr. Chapman: On the contrary, I think that they are unreasonably low if counsel were representing clients from whom property had been seized. Probably the recipients of the seized property would take a different rate.

Mr. Angell: That is one of the reasons why we are unable to see the relevancy of this, your Honor.

The Court: What is the relevancy?

Mr. Chapman: They are using the seized assets to pay themselves while they are trying to deny to the people from whom they seized the assets the same right. It is exactly the same situation we had with our Shareholders' Committee that went to the United States Supreme Court.

The Court: I understand. Very well. [629]

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-22 for identification.)

The Court: Do you object?

Mr. Angell: I do. On the same grounds, incompetent, irrelevant and immaterial.

The Court: Overruled. Admitted. No. 22.

(The document referred to was received in evidence as Petitioners' Exhibit No. 2-27-50-22.)



(Testimony of Frank C. Noon.)

Mr. Fitting: We join in that objection, your Honor.

The Court: It is admitted for the limited purpose specified by Mr. Chapman.

Is that your view? Is that your offer too?

Mr. Works: Yes, that is our understanding because if they were offered to show reasonable value we would object to them as being immaterial.

The Court: In other words, they are offered only to show that the San Francisco Bank is using the funds which are contended to be the funds of the Los Angeles Bank and a portion of which are admitted to be the funds of the Long Beach Association, not as much as contended but for the purpose of payment for attorney fees.

Mr. Angell: If that is the purpose of the offer, I would like to add another objection, that they do not tend to prove or disprove that at all, because the funds are not identified. What has been referred to as a seizure of the [630] assets of the Los Angeles Bank was a dissolution of the Los Angeles Bank under the orders of the Home Loan Bank Board Commissioner provided for by law and was not a seizure. The assets were transferred to a legal entity authorized by the Federal Home Loan Bank Act, and there was no seizure. The assets became identified with and a part of and intermingled with the assets of the Portland Federal Home Loan Bank, and there is nothing that shows in these records that are being introduced here that any part of that money that is shown

(Testimony of Frank C. Noon.)

there as being appropriated for the purposes of the budget is any part of the assets or moneys of the Los Angeles Bank or the Long Beach Association.

The Court: The objections are overruled.

Mr. Fitting: May the record show that we join in these objections that Mr. Angell makes?

The Court: Very well.

Mr. Angell: If we could have a stipulation that our objection goes to all of these documents being offered, we might save time.

The Court: It may be deemed that you have made the objections whether there is a stipulation or not.

Mr. Works: May it also be deemed, your Honor, that the movants join in these series of offers unless they specify to the contrary?

The Court: I think you had better make your record [631] specific on that.

Mr. Works: Very well.

Mr. Chapman: This is special master's No. LA-97. Perhaps the clerk will give it a new number for identification here. And it is page 1083.

The Court: I will mark it. The last number was 22, was it, Mr. Clerk?

The Clerk: Yes, sir.

The Court: This will be 2-27-50-23.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-23 for identification.)

(Testimony of Frank C. Noon.)

Mr. Bishop: The same ruling on 22 as to photographing and all of them unless specified to the contrary?

The Court: That is right.

You join in this offer? This is a budget, and for the same limited purpose?

Mr. Chapman: That is correct.

Mr. Works: We join in that.

Mr. Gilbert: Wilmington also joins, your Honor.

The Court: Very well. Admitted.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-23.)

The Court: LA-97 is an exhibit book to the minute book?

The Witness: Yes, your Honor. May I glance at it?

(The volume referred to was passed to the witness.) [632]

Mr. Chapman: I offer at this time special master's LA-300 and——

The Witness: Yes, this LA-97 is an exhibit book to the minute book.

Mr. Chapman: I am offering page 163 only, the paragraph which says "Proposed Budget for Calendar Year 1950," together with the open part of the reading.

The Court: Page 163?

Mr. Chapman: That is right.

(Testimony of Frank C. Noon.)

(The volume referred to was passed to the court.)

The Court: That is that short paragraph?

Mr. Chapman: That is right, your Honor.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-24 for identification.)

Mr. Works: The Los Angeles Bank joins in that, your Honor.

Mr. Bishop: What is it?

Mr. Chapman: A resolution of the board of directors adopting the budget that we just put in.

Mr. Gilbert: Wilmington also joins in the offer, your Honor.

Mr. Works: The Los Angeles Bank does also.

The Court: Very well. Same objection. Same ruling. This will be No. 24, Mr. Clerk. [633]

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-24.)

Mr. Chapman: This is special master's LA-300, pages 111 and 112, starting with the words "California Litigation."

(The volume referred to was passed to the court.)

Mr. Works: The Los Angeles Bank joins in the offer.

(Testimony of Frank C. Noon.)

The Court: That is the minutes of March 29 and 30, 1949?

Mr. Chapman: Yes.

Mr. Gilbert: Wilmington also joins, your Honor.

The Court: Very well. Do you mean all the rest of the minutes or just——

Mr. Chapman: Just that to the end of the meeting, "California Litigation" to the conclusion of the meeting.

The Court: Of that day?

Mr. Chapman: Of that day.

The Court: Let me understand you. The meeting recessed at 5:00 p.m. Do you mean to there or to the end of the meeting over here?

Mr. Chapman (Examining volume): Where the meeting recessed, your Honor.

The Court: Same objection. Same ruling. Admitted. No. 25.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-25.) [634]

The Court: I suppose you ought to have the other page also for the date.

Mr. Chapman: I think we should have the opening page and the closing page. In other words, the certificate of the meeting and who was present and where it was held.

The Court: That will be pages 110, 111, 112 and 114, Mr. Clerk.

The Clerk: Yes, your Honor.



(Testimony of Frank C. Noon.)

Mr. Chapman: Then on page 115 of the same book, headed "Attorney Fees."

The Court: That is the minutes of April 22-23, 1949?

Mr. Chapman: That is right. Part of those were offered as another portion but this is still another part.

Mr. Works: Los Angeles Bank joins, your Honor.

Mr. Gilbert: Also Wilmington.

The Court: Same objection. Same ruling. No. 26.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-26.)

Mr. Chapman: Special master's LA-98. I don't know that Mr. Noon has identified this. This is another one of the minute books.

Mr. Angell: We haven't seen these, your Honor.

Mr. Chapman: This one Mr. Bishop gave us a copy of at the special master's hearing.

Mr. Gilbert: Is that the budget or the [635] total expenditures?

Mr. Bishop: Total expenditures.

Q. (By Mr. Chapman): Will you identify that book for us, Mr. Noon?

A. This is another exhibit book to the minutes.

Mr. Chapman: That page was 1140. This, your Honor, is a little different situation. I will wait until you read it and then discuss it.

(Testimony of Frank C. Noon.)

(The volume referred to was passed to the court.)

The Court: Page 1140 of LA-98 will be No. 27.

The Clerk: Yes, your Honor.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-27 for identification.)

Mr. Chapman: LA-95-A. May I have that, Mr. Noon?

(The volume referred to was passed to counsel.)

The Court: Page 1140 is in as No. 27. Same objection and same ruling.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-27.)

Mr. Gilbert: Has the last offer been accepted?

The Court: Yes.

Mr. Gilbert: We join in it.

Mr. Works: We also join.

I understood Mr. Chapman was going to state his purpose. That is why I waited a moment, your Honor. [636]

The Court: I understand the general purpose of all of these is the same.

Mr. Chapman: Exactly, your Honor. It is certainly not as to the reasonableness of the fees.

The Court: I could not see any other ground for admitting them.

(Testimony of Frank C. Noon.)

Q. (By Mr. Chapman): Mr. Noon, you have before you special master's Exhibit LA-95-A, book, the word "book" being part of the exhibit because of a duplication of numbers. Can you identify that?

A. That is another exhibit book to the minutes.

Mr. Chapman: Now these I don't think I listed to you gentlemen before lunch, but they are the approval of the various budgets that we have put into evidence from the Board. It is the Home Loan Bank Board's approval of the budgets. This is page 716.

(The volume referred to was passed to the court.)

The Court: Page 716 of LA-95-A is No. 28.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-28 for identification.)

Mr. Works: The Los Angeles Bank joins in that.

Mr. Gilbert: Wilmington also joins.

The Court: Very well. Same objection. Same ruling. Admitted. [637]

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-28.)

Mr. Chapman: LA-96, page 867, another approval of a budget by the Home Loan Bank. I think I had better take these one at a time, your Honor.

Mr. Angell: While you have that book, Mr. Chapman, you might save time by looking at pages

(Testimony of Frank C. Noon.)

522 and 963 because that is where the budgets were raised.

Mr. Works: The Los Angeles Bank joins as to any and all offers with reference to this volume.

Mr. Gilbert: Wilmington joins in that also.

The Court: LA-96, page 867 will be No. 29.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-29 for identification.)

Mr. Chapman: Will your Honor turn to page 922 also?

The Court: And 964, Mr. Angell said.

Mr. Angell: No, 922.

The Clerk: Page 867 is No. 29?

The Court: Page 867 is No. 29.

Page 964 has something about a budget, too.

Mr. Chapman: Let's take them in order. Page 922 was the next one.

The Court: Page 922 will be 30.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-30 for identification.) [638]

Mr. Chapman: Then Mr. Angell suggested 522—was it 522 or 922?

Mr. Angell: 922.

The Court: And 964.

Mr. Angell: 963 or 964. It is a blanket authorization.

(Testimony of Frank C. Noon.)

The Court: 963 and 964 both relate to a budget. Maybe you might want to look at them both.

(The volume referred to was passed to counsel.)

Mr. Bishop: 963 and 964 both?

The Court: Do you offer them both?

Mr. Chapman: I do.

The Court: On behalf of the movants?

Mr. Chapman: Yes.

The Court: Let us number them.

The Clerk: Nos. 31 and 32.

(The documents referred to were marked Joint Petitioners' Exhibits Nos. 2-27-50-31 and 2-27-50-32 respectively for identification.)

The Court: Same objection. Same ruling. Admitted.

(The documents referred to were received in evidence as Joint Petitioners' Exhibits Nos. 2-27-50-29, 2-27-50-30, 2-27-50-31 and 2-27-50-32.)

Mr. Angell: And 175 ties in with the previous one offered by you in LA-97 and 1083.

Mr. Chapman: I don't know that I am interested in that one. [639]

Mr. Angell: While there is a lull, may we offer it, as an explanation of 1083 which is already in?

The Court: Let me look at it.

Mr. Angell: It is LA-300 at page 175.



(Testimony of Frank C. Noon.)

(The volume referred to was passed to the court.)

The Court: That is the meeting of December 16 and 17, 1949, under the heading "Appointment of Counsel for California Litigation"?

Mr. Angell: That is correct, your Honor.

The Court: There are two headings.

Mr. Angell: Pardon me.

Mr. Chapman: I think there is also a reference to cost on appeal. Are you interested in that one?

Mr. Works: We join in the current offer no matter whom it is made by.

Mr. Angell: Page 175, appointment of counsel under the title of "Appointment of Counsel for California Litigation."

The Court: And not the other one?

Mr. Westover: May we have the date?

The Court: December 16 and 17, 1949.

Mr. Angell: December 16-17, 1949. Did you read this, your Honor?

(The volume referred to was passed to the court.)

The Court: This will be a letter, Mr. Clerk. What is the next letter? [640]

The Clerk: 2-27-50-F.

The Court: It will be admitted as Exhibit F, that is, page 175.

Mr. Chapman: May I be clear on whose offer that is?

(Testimony of Frank C. Noon.)

The Court: That is the offer of the San Francisco Bank and it takes a defendants' number or letter.

Mr. Angell: In rebuttal to the offer of Volume LA-97, page 1083, or in explanation of it.

(The letter referred to was marked Defendant San Francisco Bank's and Official Defendants' Exhibit No. 2-27-50-F for identification.)

Mr. Chapman: Does anybody else join in that or is that only offered by the San Francisco Bank?

Mr. Works: I joined in it.

Mr. Chapman: I want to be clear on this.

Mr. Gilbert: I would like to join in it also.

The Court: It is admitted.

(The letter referred to was received in evidence as San Francisco Bank's and Official Defendants' Exhibit No. 2-27-50-F.)

Mr. Chapman: I am now offering, your Honor, the rest of the book into evidence.

The Court: The rest of the book?

Mr. Chapman: That is right. It has been offered in evidence by the other side and it is their own books. I don't see any reason why the balance, which explains the [641] entire situation, shouldn't go into evidence.

Mr. Angell: We make the same objection.

Mr. Fitting: I object to it on the obvious grounds that it is incompetent, irrelevant and immaterial.

(Testimony of Frank C. Noon.)

Mr. Chapman: It is their own offer of their own books.

Mr. Angell: We have not read the book, your Honor. I don't know that there is anything in there that we particularly care that the court did not see. It is a public record, of course.

The Court: I see here "California Litigation," but I cannot see any need for offering the whole book in evidence.

Mr. Chapman: Your Honor, the matters to which they refer there are referred to in repeated instances and once they offer into evidence any part of the book the privilege is gone.

Mr. Angell: You disclose the most startling rules of evidence I ever heard, that by offering one resolution you therefore swallowed a whole book, but that may be a rule.

But, your Honor, this record is already slightly encumbered, and while we would like to make Mr. Chapman happy, I can't see that the minutes or minute book, whatever that happens to be, has to do with this.

The Court: I do not think the whole book should go in evidence by any means. There are just countless things that are discussed in here, and while no doubt, in glancing through [642] it I can see occasional references to California Litigation, and that may have some bearing or materiality on the matter that is now immediately before the court, but I do not see any necessity for offering all of it.

Mr. Chapman: Your Honor, I am very serious in that offer, and I would like to have the book

(Testimony of Frank C. Noon.)

marked for identification if your Honor would look at the balance.

The Court: There is no reason why the book should not be marked for identification.

Mr. Chapman: And I would like to have it all copied so it can be made ready on appeal.

The Court: You have a microfilm of this?

Mr. Chapman: No, I haven't. One has been made but so far I haven't been able to get near it.

The Court: Where is it?

Mr. Chapman: The special master has it, and Mr. Bishop says nobody can have it until you rule on it.

Mr. Works: May the record show that the Los Angeles Bank does not join in the offer of the entire volume.

The Court: You can have the whole book marked for identification but it is already marked for identification as Exhibit A-1, but that was way back in 1948.

Mr. Bishop: That was before it had so many pages in it.

The Court: Is the book complete now?

Mr. Bishop: No. [643]

Mr. Angell: I believe that is the current book.

Mr. Bishop: That is the current book. It grows.

The Court: It can be marked for identification in connection with this hearing, Mr. Clerk.

Mr. Chapman: Your Honor, what means will we have available of excluding a piece of evidence to present that in case it should become necessary on

(Testimony of Frank C. Noon.)

the appeal? Would you order the microfilm released?

The Court: I do not know. I will not cross that bridge until I come to it.

Mr. Chapman: Then I will have to withdraw my offer to permit the book to be withdrawn. If it is marked for identification I believe it has to become part of the record so that if there is the necessity to review that ruling there is something to be presented to the appellate court. I am trying to make their books available to them but in that case we will ask that a microfilm be kept here, or something of that nature.

Mr. Bishop: I will have to call your Honor's attention to previous rulings made by this court about the minute books. On the date that is shown in the front of that book, when that book was originally here, your Honor was very mindful of the situation in relation to the disclosure of matters pertaining to individual association's interests, and your Honor stated that not only in the public interest but in the [644] interest of the particular individual association he was not going to permit the photostating in the entirety of that very minute book, and we believe that that decision and ruling was proper.

There are matters in that minute book of vital concern to individual associations but that have no concern to this litigation.

Mr. Chapman: I think, your Honor, that counsel offering the evidence has some right to be heard



(Testimony of Frank C. Noon.)

on the question of whether we are concerned in the litigation. I would like to direct your Honor's attention to a ruling of yours later than 1948.

The Court: For instance, what is the difference about a retirement fund? I notice such a heading. And the trustee of the retirement fund?

Mr. Chapman: Some parts of it may not be material, your Honor, at the present moment but I would not like to predict whether they would or would not be later.

I would like to put into the record, your Honor, your order of inspection of February 7, 1950.

The Court: I will take judicial notice of the files and records in this proceeding without putting it into the record again. It is in there once.

Mr. Chapman: It says on line 11, page 7, paragraph 8:

"The documents and files which are [645] inspected or examined or portions thereof shall be photostated at the request of any party which has designated such document or file for inspection."

Now we have not had a photostat of it. There is a microfilm extant. I understand your Honor either has or is about to exclude part of it and——

The Court: No, I am not excluding part of it. I am just saying that the entire book, a lot of it is wholly immaterial.

Mr. Chapman: I think as to portions of it your Honor is correct, but I am not prepared at this moment to say which portions, and they have offered part of it which opens up the rest of it to our offer

(Testimony of Frank C. Noon.)

in evidence. I want something for the record if the original book is to leave the court, as I said, in case we are up in the Circuit again on this matter.

Mr. Fitting: If the court please, I would suggest that Mr. Chapman indicate page by page what is material.

Mr. Bishop: I think it is his duty to assist the court to that extent.

Mr. Chapman: I am willing to do that if I can have the book long enough to do it. I saw it for the first time last Tuesday after asking for it a long time ago.

The Court: How long would it take you to look at this book?

Mr. Chapman: If your Honor would give me until the [646] close of the argument—I understand we are going to be here tomorrow and I don't expect to do a lot of the argument—I will try to go through it.

The Court: I think we skipped your offer in evidence, or did I admit it as F?

Mr. Chapman: You did.

Mr. Angell: That is admitted as F.

The Court: Page 175?

Mr. Angell: Yes.

Mr. Bishop: Your Honor, it was also part of your ruling in relation to other matters in the minute book relating to other associations that it was even limited to counsel for examination.

Mr. Chapman: I have no objection if the book is sealed or the copies remaining sealed in the files

(Testimony of Frank C. Noon.)

of the court, but I would like it available in case there is an appeal.

Mr. Bishop: We have given Mr. Chapman and Mr. Westover full access and opportunity all this week to read that book and they have all perused that book pretty thoroughly. I particularly mention that at this time because I believe it is evidence of our good faith that we have tried in every way possible to comply with that subpoena that produced those records.

Mr. Westover: Mr. Bishop, I will have to challenge that. I am sorry. That particular book I have never seen. [647]

Mr. Bishop: That will be your fault, Mr. Westover, not anybody else's.

Mr. Westover: May I finish the statement?

Mr. Bishop said I had all week to peruse it. I did not. It was brought out and it was asked that it be passed around the table. I waited my turn to see it and before it got to me they put it back in the vault. I have not seen the book to go through it whatsoever. We stayed there until 5:00 o'clock. I did go through the minute books, the other documents, but the minute books I was to be allowed to see at some later time.

The Court: Have you all the things in these exhibit books that you want marked up to now, Mr. Chapman?

Mr. Chapman: No, your Honor, I have not.

The Court: Let us get along with those and get

(Testimony of Frank C. Noon.)

that done and then I will give you a chance to look at the minute book.

Mr. Westover: I would like to be afforded the opportunity to go through the minute book at some stage of these proceedings.

The Court: I will make an appropriate order on it.

Mr. Westover: Thank you.

The Court: To protect the confidences involved.

Mr. Angell: I want to say that just because counsel for San Francisco Bank sit by and say nothing, we do not admit that the books have not been made available to them. It may [648] be that they didn't have time or they haven't been able to, that I don't know, but I don't want this record to show that any attempt has been made by the San Francisco Bank or its counsel not to give access to these books when they were available for that purpose.

Mr. Chapman: The special master's records will show when those books first became available, and that was on noon Tuesday——

The Court: Let us not get into a picayunish row here about whether you did or did not see them. Let us get on with the evidence. What do you want to put in evidence next?

Mr. Chapman: I have already offered all of this book but there is another portion of it that I am going to offer specifically.

The Court: I will not sustain the objection to the offer because in making the objection it is made

(Testimony of Frank C. Noon.)

on grounds that if I sustained them I would be deciding the merits of the litigation. But I will of my own motion refuse your offer in evidence on the ground that it appears upon a superficial examination of the book that there are many things in it that are wholly immaterial to the matter now before the court.

Mr. Chapman: On page 185, under heading of "California Litigation." And this has not been directed to your attention before. I have the minute book LA-300. [649]

(The volume referred to was passed to the court.)

Mr. Chapman: I understand other counsel haven't seen this particular matter either.

Mr. Angell: Your Honor please, in the interest of saving the time of the court, I am wondering if we adjourn now and allow Mr. Westover and Mr. Chapman and other counsel, if they want to go through these and find out what they want.

The Court: It seems to me that that time could well be used other than taking up the time of the court.

Mr. Angell: We would be willing to stay here so that they can get what they want.

The Court: It seems to me if you would go through and pick out the pages serially, book so-and-so, pages so-and-so——

Mr. Angell: It will save a lot of time and make for a more orderly procedure, because matters are



(Testimony of Frank C. Noon.)

coming in without regard to chronology or dates or anything like that.

Mr. Chapman: The reason for that is to trace through and put in the budget, the adoption of the budget and the approval by the Home Loan Bank Board. That is why it does not come in chronological order, because those acts were not chronological.

Q. Mr. Noon, there were some other matters besides the books, a number of vouchers, cancelled checks and those matters. Are they here? [650]

A. Yes.

The Court: Are you finished with the books?

Mr. Chapman: No, I am not. I thought your Honor wanted us to go through the minute book again.

The Court: Is it the minute book only or the exhibit books?

Mr. Chapman: The two are interlocking.

The Court: In other words, the minute book is a part of the exhibit books?

Mr. Chapman: That is right. Exactly.

Mr. Westover: That is what I am attempting to do, what you suggested, but I have never seen the books before although I have heard them referred to in other places.

The Court: Now what are these?

Mr. Chapman: Vouchers and expense accounts in connection with the litigation.

The Court: Is there any reason why they should be proffered? You have already indicated by the reports of the Board the payment of the fees and

(Testimony of Frank C. Noon.)

expenses and the authorization. Is this not just cumulative?

Mr. Chapman: We have run adding machine slips and there are some \$70,000-odd approximately of directors' traveling expenses, directors' fees and other matters above the figures we have already put in. I think you are perhaps right that it is merely cumulative. [651]

There is one particular item, however, that I want to put in but not the whole bulk of it. That item has a number.

The Court: Have you seen these, Mr. Works or Mr. Gilbert?

Mr. Works: No, I haven't.

Mr. Gilbert: I havent seen the vouchers themselves. They were being inspected by others all week. I am familiar with it generally.

Mr. Bishop: Your Honor, I wish to state, for a limited purpose only that each and all these boxes contain statements, vouchers, and everything in accordance with the demand contained in the subpoena so far as we were able to produce to date, that this material has been coming in from day to day, and some of it has been available for examination since early last week, and every one of them has been given a number and microfilmed before the special master, and each one of these vouchers has been gone over by Mr. Chapman and adding machine tapes run, some of other counsel have looked at it all they wanted to, but I wanted your Honor to know that there are boxes of them full

(Testimony of Frank C. Noon.)

and we would like to keep them in the same order because they were pulled from the files for each month.

The Court: I understand.

Mr. Bishop: And it has entailed a great deal of work, hours of work, and Mr. Chapman has just now asked for one of the last parcels that came in, Parcel 7. I think he wants [652] some statement out of there.

Mr. Angell: Just to clear the record, Mr. Chapman says that there is about \$70,000——

The Court: In addition to that authorized by the Board, I understand, according to the minutes already put in.

Mr. Chapman: That is right.

Mr. Angell: We do not agree with that statement simply because we don't know. We don't want the statement of Mr. Chapman to be taken as a fact.

The Court: In other words, you have not run the vouchers yourself?

Mr. Angell: We have not run the vouchers ourselves. I have never seen them.

Mr. Chapman: There was an adding machine tape made on them.

Mr. Angell: I would have to go and find out that budget item by item and look at the amounts.

Mr. Chapman: I can't look at records and argue at the same time. The material was presented in the form that you see it, in installments. We did have adding machine tapes run. Mr. Bishop per-

(Testimony of Frank C. Noon.)

mitted us to do that as part of the inspection. The lump of this material has to do with expenses, not with attorney fees, but expenses, traveling expenses of the directors, and directors' fees on the meetings.

There are, however, one or two particular items, and in [653] this mass of material it is not easy to locate them instantly. I think in 5 or 10 minutes I can do so.

The Court: What do they relate to?

Mr. Chapman: One of them is Chairman Perham's traveling expenses being questioned by the secretary of the Bank, a dispute over that matter which apparently was finally settled and rectified. But it went into considerable detail of what was proper or improper traveling expenses for the San Francisco Bank, and how they were computed. It bears on the litigation in that respect.

The Court: How does it bear on attorney fees?

Mr. Chapman: In that the meetings of the directors have all been out of the state of California since the directors became defendants, as disclosed by the minute books, all of which I have offered in evidence.

The Court: If that is disclosed by the minute books, what probative force do these have?

Mr. Chapman: It indicates the expenses of liti-

(Testimony of Frank C. Noon.)

gation in keeping the directors out of California, the home office of the Bank, so they could not be served within the state. In other words, the expenses of avoiding the jurisdiction of the court.

Mr. Angell: We object to that view, your Honor.

The Court: I cannot see how that would have any effect upon the result which is sought by the movants here, or [654] objected to by the defendants and respondents, in so far as attorney fees are concerned.

Mr. Works: I am going to object to that, too, as immaterial and irrelevant.

The Court: I do not think it is material or relevant.

Mr. Chapman: All right. In that case we close the situation with the right of going through the exhibit books and the minute books.

The Court: Very well. It is 15 minutes of 5:00 now. What do you want to do, examine them until, say 7:00 or 7:30 and come back this evening and see if we can finish this hearing tonight?

Mr. Chapman: I see no reason, your Honor, why the argument could not proceed. The only thing that would be, as you say it would be cumulative, more of the same on the budgets.

The Court: I do not know. How is anybody going to argue until he knows everything that is in evidence? How am I going to relate the argument until I know what is in evidence? Here we have now taken this afternoon, in fact we have taken all day,



(Testimony of Frank C. Noon.)

and have actually made very little progress in so far as reducing anything to evidence is concerned. I do not want to hold court on Easter Sunday.

Mr. Chapman: I hope we haven't made that necessary, your Honor, nor anywhere near approaching that.

May I make this suggestion? Rather than attempt to go [655] through some 800 pages of minute books——

The Court: It does not take long to go through minute books. Anybody who is experienced in reading, as you are, does not need that time.

Mr. Chapman: I appreciate your Honor's compliment, but in a case this complicated I don't believe a casual glance will do it. I am primarily interested in having offered the entire minute book into evidence in preserving it available for a record on appeal if that becomes necessary. Now the parts of it that are pertinent to take that page by page isn't an hour or an hour and a half's task. I understand that you are ruling parts of it are immaterial. I do not contend by that, that that need be made available for public inspection, as Mr. Bishop and the other gentlemen seem to object to, but I do think when they offer part of the book in evidence that the entire book becomes admissible on our part. I am firm in that position, and right or wrong it is a position I want to urge if there is an appeal.

The Court: I think you are right as to the material portions but not as to everything in that book. The Witness testified that these exhibit books

(Testimony of Frank C. Noon.)

are part of the minute books. What do they do, fill a cabinet drawer there with books? There certainly must be something in there that is material if anything is material.

Mr. Chapman: Yes, there [656] unquestionably is.

The Court: And it seems to me that that can be found out in sitting down and in two or three hours looking at those books.

Mr. Chapman: I am willing to undertake it in whatever time your Honor allows, but I would like to point out on the inspection matters that these books came in and were available to us at noon on Tuesday, Tuesday and Wednesday were the only hearing days before the special master, and that there are four counsel to examine them, and of necessity we have had to split it up and one counsel take one group and other counsel another group. I had a total of about an hour and a half to work on the 800 pages. They were courteous enough to stay from 4:30, their regular closing time, until 5:00 o'clock to give me that last half hour on these matters. Now that is the only time I have had on these since they were down here two years ago. If your Honor thinks I should try to find what is material in another two hours, I will try and do it.

The Court: I take it that after this is finished that there will be no further evidence?

Mr. Chapman: Not on our part.

The Court: Is that correct?

Mr. Works: That is correct.

(Testimony of Frank C. Noon.)

The Court: Then it will be a matter of argument only.

Mr. Westover: Your Honor please, I have a matter that I will want to offer into evidence when it is appropriate. [657]

The Court: Books?

Mr. Westover: A portion of a book.

Mr. Chapman: Is there any chance of you doing that while I go over here in a corner and read this?

Mr. Westover: It will only take a few moments to do it. I have only one matter.

Mr. Chapman: Can't we proceed with that?

The Court: Have these people seen that book?

Mr. Westover: No, I just found it now again myself.

Mr. Angell: I am wondering, your Honor—it is 10 minutes to 5:00—we will read this in and then find something else. I am wondering if we couldn't take an adjournment now and we would be willing to stay on here tomorrow so that it can be put in in an orderly fashion in the morning and then conclude the argument tomorrow. I think some of us are pretty weary. We have been working pretty late for a long time. I personally would like to go on tomorrow rather than tonight, if it is agreeable to the court and other counsel.

The Court: I would like to do that too, counsel, but——

Mr. Angell: Or Monday.

The Court: I have other law and motion matters on Monday.

(Testimony of Frank C. Noon.)

Mr. Westover: Your Honor please, I might state that there was an item I asked Mr. Bishop to have in court the other morning and he didn't happen to have it here, but he did [658] let me see the book at the office subsequently, and I had an opportunity to see it just now. So it is not something that was just found.

Mr. Angell: I thought there might be other things that you might want.

Mr. Westover: There might be, I don't know, but this particular one was not just found.

Mr. Works: Your Honor, I am rather struck with Mr. Angell's suggestion. I know my argument isn't going to take much more than 30 or 45 minutes. These gentlemen can stay here and hunt through the records to their hearts' content as far as I am concerned.

(Addressing Mr. Gilbert) Do you feel that way?

Mr. Gilbert: Yes, I do. If we take it up in the morning we will probably be in a position to go right ahead with the argument at that time.

Mr. Angell: I just thought we would save a great deal of the court's time.

The Court: I do not think there is any necessity of taking everybody's time here while counsel have to look through the books and find the things that he deems material. I do not see why it cannot be done when the court is not in session. But at the same time it is difficult to make any rapid progress in this case. We spent an hour and 15 minutes this morning before we got down at all to the matter

(Testimony of Frank C. Noon.)

that [659] everybody came here for, and I am afraid if I recess now until tomorrow morning we will still be here tomorrow night. In any event, I would like to have this matter finished, as far as the court is concerned, by tomorrow noon under all circumstances.

Now this is a very slow process. There is no reason why you cannot offer, if you have time to find it, pages so-and-so of book so-and-so and it will not take me long to glance at them.

Mr. Chapman: I made every effort to have these books available. I subpoenaed them three weeks before the hearing and I just got them two days ago.

The Court: I will tell you what I will do. I will recess now, and suppose you stay here until 6:00 o'clock and see what progress you can make in looking through the books, and if it looks like you have completed the things you want to find by that time we will come back here and complete it; if not, why then we will recess until tomorrow morning.

Mr. Chapman: I think that is an excellent suggestion.

The Court: But if I cannot finish this today or tomorrow I have no idea when I can resume it again. My first open date is September.

Mr. Works: Is it your Honor's thought to let counsel make their examination and conclude the taking of evidence tonight and then have the argument tomorrow? [660]

The Court: That is right.



(Testimony of Frank C. Noon.)

Mr. Works: That is all right with me.

The Court: And I think anybody who might have an objection, even though you say you do not, you should be here. You may want to object to it yourself.

Mr. Chapman: If I am only to have until 6:00 o'clock I would like to start as soon as I can.

The Court: If you will do that, and if you are going to take the lead on this, why you can go to work on the books now. So we will recess until 6:00 o'clock.

(At this point a recess was taken.)

The Court: I understand from Mr. Stacey that you have concluded your examination of the books, Mr. Chapman.

Mr. Chapman: The best I could with the time I had, your Honor, without delaying the hearing any longer.

The Court: And have you, Mr. Westover?

Mr. Westover: No, your Honor. I didn't even get to them. Mr. Chapman was using the books.

Mr. Chapman: There was only one book.

The Court: You looked at some other books, did you?

Mr. Westover: Yes, sir, the exhibit books.

The Court: You have completed the examination of the black book which you had before recess?

Mr. Westover: Certainly, your Honor. That I already had ready to put in before recess. [661]

The Court: I think perhaps we had better do

(Testimony of Frank C. Noon.)

this: It does not make any difference to me because I do not eat dinner, so I am going to recess until 7:30. We will just lock up the courtroom here and leave your books as they are and come back at that time, and then we will continue until we finish all the evidentiary matters and then put the matter over for argument until tomorrow morning. I am afraid if we proceed now on the matter of the books that we will be here straight through to 9:00 o'clock and the longer we go the more tired everybody gets, including myself.

Mr. Chapman: With one amendment I would like to concur, the amendment being, in order that I get a little more time on the books, if somebody will bring me a sandwich and leave your courtroom open we will be ready by 7:30. I would like to be locked in here with them until then.

Mr. Works: May I inquire how much further examination is needed?

Mr. Chapman: Examination of the books?

Mr. Works: Yes.

Mr. Chapman: I certainly can't tell you. I am trying to cut it off to meet the court's convenience and counsel's convenience.

Mr. Works: My understanding was that you wanted to look at this one book.

Mr. Chapman: That is right. [662]

Mr. Chapman: I looked at the index only. There is no chance to examine 300 pages. I don't know what I will find.

The Court: Is there any objection to that?

Mr. Angell: We have to keep somebody here then to keep track of these records and it means

(Testimony of Frank C. Noon.)

that we can't go out to dinner except one at a time.

Mr. Chapman: It certainly won't take all five of you. You can take turns. I have offered to skip whatever dinner I was going to get.

The Court: I see in the back there a young man who seems to be officially connected on this side of the table.

Mr. Angell: That is Mr. Adams, your Honor, my law parner's associate, and I think when we get through we might ask to have him admitted here.

Mr. Chapman: There is also a representative of the San Francisco Bank here.

The Court: Is there somebody here who can be a custodian of the records?

Mr. Purmort: Yes.

The Court: Why not leave him here then and Mr. Chapman and somebody can get some sandwiches and coffee for them.

Mr. Fitting: May I suggest, if the court please, before court reconvenes that we be given just a short opportunity to look at what Mr. Chapman has designated and that will probably save a lot of the court's time too. We had just started [663] looking through what he was planning to offer in this book when the recess finished.

Mr. Chapman: Why don't you continue with that and I will work on the exhibit books?

The Court: Then what I will do, I will recess until 8:00 o'clock. You can come back at 7:30 and do that, because you people being familiar with the books it will not take you long to look at what Mr. Chapman has picked out.

(Testimony of Frank C. Noon.)

Mr. Bishop: He has given us 32 pages to look at already.

Mr. Angell: And that is only in one book.

The Court: Some of those pages in those books you can read while you are opening them almost, especially in the minute books.

Well, then, is it agreeable to everybody—what is your name, young man?

Mr. Purmort: Purmort, P-u-r-m-o-r-t.

The Court: Why not leave Mr. Purmort here in charge of the books and somebody get a sandwich for him and Mr. Chapman, and we will reconvene at 8:00 o'clock, and you come back at 7:30 and look at what Mr. Chapman has designated, but after that we will stay until we finish the evidence to-night.

Mr. Dusenbery: If the court please, I assume your Honor's ruling made some time ago that these books cover a great many subjects and are to be examined by the attorneys [664] only——

The Court: Yes, that is correct.

Mr. Chapman: That has already been my understanding.

The Court: If he has to have a stenographer at his elbow, that should be all right.

Mr. Dusenbery: Yes.

The Court: But by the attorneys only and none of the parties or officers of any of the associations.

Mr. Chapman: That has been respected.

(Testimony of Frank C. Noon.)

The Court: Very well. Recess until 8:00 o'clock.

(Whereupon, at 6:10 o'clock p.m., a recess was taken until 8:00 o'clock p.m., of the same date.) [665]

April 7, 1950—8:00 P.M.

The Court: The appearances are the same. Proceed, Mr. Chapman.

Have you concluded your investigation of the records?

Mr. Chapman: I have done all that I could with the time that I had, your Honor, and I am willing to rest the attorneys' fees matter on it.

The Court: And have you called attention to opposing counsel to the matters which you wish to introduce?

Mr. Chapman: Yes, I gave them a list.

The Court: And they have examined them?

Mr. Angell: We assume so. He has given us a great deal.

Mr. Chapman: I gave you a list.

Mr. Fitting: We have examined the list.

The Court: You have examined the list?

Mr. Fitting: Yes.

The Court: Very well.



## FRANK C. NOON

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Mr. Chapman: LA-84 from the special master's proceedings, to be marked for identification, please, Mr. Clerk.

The Clerk: 2-27-50-33. [666]

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-33 for identification.)

Mr. Angell: What is this here?

Mr. Chapman: Just what you saw.

Mr. Angell: Are you offering it in evidence?

Mr. Chapman: I am getting it marked for identification first so I can refer to it.

Showing your Honor 2-27-50-33.

(The volume referred to was passed to the court.)

Mr. Angell: We would like to make our objections to it after your Honor has read it.

Mr. Chapman: Apparently some of counsel have not seen this, your Honor.

Mr. Works: I haven't seen it.

(The volume referred to was passed to counsel.)

Mr. Chapman: I offer this in evidence, your Honor, to show the disposition made of some of the assets seized of the Los Angeles Bank and also bearing on the question of——

(Testimony of Frank C. Noon.)

The Court: I did not hear you.

Mr. Chapman: To show the use made of assets seized from the Los Angeles Bank and also bearing on the question of the allowance of attorney fees.

The Court: To show what?

Mr. Chapman: The use made by the defendant San Francisco Bank of assets seized from the Los Angeles Bank in connection [667] with this litigation. I think it is obvious that they are paying hotel bills for their co-defendants to the extent of \$121 is some indication of what use is being made of our assets.

Mr. Angell: It might have been Portland, your Honor.

Mr. Fitting: On an attorneys' fees hearing I fail to see the relevancy of anything that is done with the assets. Perhaps on the merits of the case that might be material, but not on this matter.

The Court: This afternoon that question arose and I passed on it.

Mr. Fitting: It still seems to us to be highly immaterial and irrelevant.

The Court: It may be you do not have as good an imagination as I do to see the materiality of it, but I see counsel's point.

What is the date of that?

Mr. Chapman: March, 1948, your Honor, if I remember. Perhaps the clerk should read it.

(Testimony of Frank C. Noon.)

The Clerk: March 30, 1948.

The Court: A hotel bill of Divers, Adams and somebody else.

Mr. Chapman: Eisler, one of the counsel for the Home Loan Bank Board, one of the defendants in this litigation.

The Court: And you offer this only in connection with [668] the point you made with relation to the payment of counsel fees?

Mr. Chapman: That is right.

The Court: That is, that it goes to the use of funds which you claim are funds of the Long Beach Association?

Mr. Chapman: In part; yes.

The Court: And you also claim, and the Los Angeles Bank claims, are funds belonging to the Los Angeles Bank?

Mr. Chapman: I claim that it is, as a stockholder of the Los Angeles Bank in behalf of the Long Beach Association. It is obviously counsel fees for one of counsel in the litigation for expense fees and for certain of the parties in the litigation, and it has been paid from our assets.

The Court: Where is the itemized bill?

Mr. Chapman: Your Honor, that is in this vast group of papers.

The Court: I know, but after all what did they spend that money for?

Mr. Chapman: I could guess.

The Court: It will be admitted for the limited

(Testimony of Frank C. Noon.)

purpose for which counsel has offered it. It certainly has no other probative value.

(The document referred to was received in evidence as Joint Petitioners' Exhibit No. 2-27-50-33.)

Mr. Chapman: Now, your Honor, on LA-300, the part of [669] which Mr. Angell introduced in evidence, I have spent the time trying to get the material portions of it. We have a number of page references starting on page 46.

The Court: If you will let me look at the book and if you can call my attention to the page as you call them out.

(The volume referred to was passed to the court.)

Mr. Chapman: Page 46, your Honor, headed "California Litigation." With the limited time I had, I didn't have time to make notes of the substance of those.

The Court: This is the minutes of January 24, 1948.

Mr. Chapman: I am offering that in evidence.

Mr. Fitting: We object on the ground that that is irrelevant.

Mr. Angell: We have the same objection.

The Court: The same objection which has heretofore been made and stated is now deemed to have been made on behalf of everybody who is not offering this document.

(Testimony of Frank C. Noon.)

Mr. Westover: Not quite, your Honor. I have not joined in the offer to that document, nor am I objecting to it.

Mr. Works: That is our position, your Honor.

The Court: Except those who take no position at all.

Mr. Works: That is right.

The Clerk: The number is 2-27-50-34.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-34 for identification.) [670]

The Court: The next one.

Mr. Chapman: Page 55 under the heading "Pending Litigation."

The Court: To where?

Mr. Chapman: I will have to see, your Honor.

The Court: To the end?

Mr. Chapman: To the end of the reference to that material.

The Court: To the end of the resolution on page 56, which appears to be a new subject matter.

This on page 55 is the minute of April 16, 1948, with the heading "Pending Litigation." That will be No. 35.

Mr. Chapman: That went over onto page 56, did it not, your Honor?

The Court: It is page 55 of LA-300, minutes dated April 16, 1948, and page 56 down to the beginning of "Application for Permission," and it is numbered 2-27-50-35 for identification.



(Testimony of Frank C. Noon.)

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-35 for identification.)

The Court: Next.

Mr. Chapman: Page 64; heading "Pending Litigation."

The Court: That is the minutes of July 23, 1948, page 64, marked for identification as [671] 2-27-50-36.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-36 for identification.)

The Court: It has some initials over at the side in ink. I do not see any significance to them.

(The volume referred to was passed to counsel.)

Mr. Angell: That was rescinded, was it not? Isn't that the one?

The Court: No, that is where somebody stipulates to a judgment in a case filed in San Francisco apparently, or refused to.

Mr. Chapman: I think you can include the initials from "Pending Litigation" to "Missoula."

The Court: The initials are "B.A.P.," I take it.

Mr. Chapman: I think that is correct.

The Court: What is the name of the chairman who signed this?

Mr. Angell: Benjamin A. Perham, P-e-r-h-a-m.

The Court: It will be marked for identification.

(Testimony of Frank C. Noon.)

Mr. Chapman: I am offering it in evidence, your Honor, not just for identification.

The Court: Let us get your identification first and then you can get all your objections in.

Mr. Chapman: The next is pages 69 to 72, inclusive. Page 69 starts with "Pending Litigation."

I would like to see that page 69 a moment, your Honor. [672] My notes are not complete.

(The volume referred to was passed to counsel.)

Mr. Chapman: That is right, from the top of the page to the bottom of page 72.

The Court: That appears to be minutes of August 25, 1948, pages 69 to 72 and is No. 37, Mr. Clerk, for identification.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-37 for identification.)

The Court: There are some pencil notations made in the margin here. I do not know whether you are offering those or if they have been made by somebody in the examination of these minutes.

Mr. Chapman: I am offering whatever is on the page, your Honor.

Mr. Bishop: May I see it, please?

(The volume referred to was passed to counsel.)

The Court: I do not know the significance of

(Testimony of Frank C. Noon.)

it. It says something about being sent to Mr. Dusenbery.

Mr. Angell: We don't know whose it is, but we have no objection.

The Court: Let me ask Mr. Chapman: You did not make those notes?

Mr. Chapman: No, I have never marked their books in any way, your Honor. [673]

The Court: Well, it says, "Copy of following sent to V. Dusenbery, 9-21-49." These minutes are dated August 25, 1948, which would be 13 months after the minutes.

Mr. Angell: Unquestionably, your Honor, there is some secretary I think that was asked to send a copy of that to someplace and they made the note on there. That is all it could be.

The Court: I do not know.

Mr. Chapman: I don't either, but I still would like to have it in evidence.

The Court: Very well. Pages 69, 70, 71 and 72, the entire three pages of the minutes of August 25, 1948, will be marked No. 37 for identification.

Mr. Chapman: The next is pages 74 to 77, your Honor. May I see where it starts again? I think it says "California Litigation."

(The volume referred to was passed to counsel.)

Mr. Chapman: No, "Annual Stockholders' Meeting" is our starting point on that one.

The Court: To where?

(Testimony of Frank C. Noon.)

Mr. Chapman: To the end on page 77.

The Court: To the end where it begins "Financial statement"?

Mr. Chapman: That is right.

The Court: It says the meeting adjourned. [674]

Mr. Chapman: That is where it stops.

Mr. Angell: What is the date of the meeting, your Honor?

The Court: I will identify it as soon as I read it. That is No. 38.

Mr. Angell: What is the date of that?

The Court: It appears to be the minutes of September 19 and 20, 1948, at which there were eight directors present and four did not get there, beginning with "Annual Stockholders' Meeting of September 20, 1948," on page 74, all of page 75, all of page 76 and that portion of page 77 which ends just before the words "financial statement."

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-38 for identification.)

Mr. Chapman: Next is page 90, starting with "California Litigation."

The Court: Page 90?

Mr. Chapman: Page 90 I have here, "California Litigation."

The Court: Page 90 is not there. It is page 89 on one side and somebody forgot to stamp 90.

Mr. Chapman: That is right.

(Testimony of Frank C. Noon.)

The Court: That is to say, correctly speaking, it is the page between page 89 and page 91.

Mr. Chapman: It is an unnumbered page.

The Court: "Costs of California," just that short paragraph? [675]

Mr. Chapman: No, the next paragraph. It is those two paragraphs together.

The Court: Very well. And that refers to page 955 of the exhibit book.

Mr. Chapman: That is correct, which I think is already in evidence, your Honor.

The Court: The minutes of December 17 and 18 of 1949, found on the unnumbered page occurring between pages 89 and 91, beginning with the title "Cost of California Litigation to Date" and ending with the end of that page where it says that the meeting was recessed at this time for luncheon to reconvene at 2:00 p.m., will be 39 for identification.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-39 for identification.)

Mr. Chapman: I was wrong about that page 959, your Honor. I am showing it to other counsel.

The Court: The book states that the directors were supplied with the detail of the costs of the California litigation to date in the total amount of \$44,284.46, which schedule will be found on page 955 of the exhibit book.

Mr. Chapman: Here is the page, your Honor. It is one that hasn't been entered, your Honor.



(Testimony of Frank C. Noon.)

(The volume referred to was passed to the court.)

The Court: Very well. Page 955 will be No. 40, of [676] LA-96. It has a date as of December 15, 1948.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-40 for identification.)

Mr. Chapman: Page 91 of LA-300.

The Court: Why not put that all in the same exhibit?

Mr. Chapman: That is another one. That is the report of the attorneys' conference in Washington, D. C., page 91.

The Court: Page 91 of LA-300. This entry here, "Messrs. Dusenbery, Angell and Holmes left the meeting," is that the material part?

Mr. Chapman: No, "Report of the Conference." The top of the page, "Report on Attorneys' Conference."

The Court: Do you want anything else on that page while we are on it? If so, let us get it marked.

Mr. Chapman: Down to the line "Harold Holmes, president of the bank."

Your Honor, I think I will take that down to the full page, to the end of the page.

The Court: Page 91?

Mr. Chapman: All of page 91.

The Court: That will be No. 41.

(Testimony of Frank C. Noon.)

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-41 for identification.)

Mr. Westover: Does it refer to a date, your Honor?

The Court: It is page 91 of LA-300 and purports to be [677] the minutes of December 17 and 18, 1948.

Mr. Chapman: May I see page 99, your Honor?

(The volume referred to was passed to counsel.)

Mr. Chapman: That is the Home Loan Bank Board's resolutions, to the top line of the following page.

Mr. Bishop: What page, please?

Mr. Chapman: 99.

The Court: That will be marked 42, and is page 99 of LA-300, minutes of January 13 and 14, 1949, beginning with the title "Home Loan Bank Board Resolutions," and ending with the first sentence on page 100.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-42 for identification.)

Mr. Chapman: On page 100, beginning with the words "California litigation."

The Court: The same book?

Mr. Chapman: The same book.

(Testimony of Frank C. Noon.)

The Court: And the same date?

Mr. Chapman: Yes.

The Court: No. 43 will be page 100 where it begins "California Litigation," through that page and all of pages 101 and 102 of the minutes of January 13, 14, 1949, of LA-300.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-43 for identification.) [678]

Mr. Chapman: May I see page 105 before I start?

(The volume referred to was passed to counsel.)

Mr. Chapman: Page 105, starting with "Costs of California Litigation," ending on page 106 with something about Azusa.

The Court: That will be 44, beginning on page 105 with the heading "Costs of California Litigation to Date," and ending on page 106, beginning "Application for permission to organize a new Federal, Azusa, California," of LA-300, minutes of February 25 and 26, 1949.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-44 for identification.)

Mr. Chapman: Page 112, starting with "Consideration of By-law Indemnification of Directors," and running to the end of that subject matter.

The Court: Which is one paragraph. The next

(Testimony of Frank C. Noon.)

one starts "Attendance at National Convention, June, 1949."

Mr. Chapman: That is where we end.

The Court: You end there?

Mr. Chapman: That is right.

The Court: No. 45, page 112, LA-300, minutes of March 29 and 30, 1949, being one paragraph starting with "Consideration of uniform by-law to provide for indemnification of directors." [679]

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-45 for identification.)

The Court: Next.

Mr. Chapman: Next is page 127, "Report of California Litigation," to where that subject ends on page 128.

Mr. Angell: After your Honor has read this one, I want to make a further objection. That is one I think is particularly objectionable because it hasn't a thing to do with this case and it does have something to do with counsel in the case. I submit, your Honor, there is nothing relevant in there to this litigation or to the application for attorney fees.

The Court: Very well. I have read it.

Mr. Angell: There is one part of it there, your Honor, that I think could not be considered for any purpose whatsoever that has anything to do with this case. I will ask that in so far as that part is concerned that it not be admitted in evidence. It

(Testimony of Frank C. Noon.)

certainly could do no one any good in the case at all.

Mr. Chapman: I am interested in what part that is when the court is through reading it.

Mr. Angell: It is the part that has to do with Mr. Bishop, and I don't think you even ought to offer it.

(The volume referred to was passed to counsel.)

Mr. Chapman: I would like to talk to my colleagues about—— [680]

(Conference between counsel.)

Mr. Chapman: I don't think he needs the objection. I will withdraw that paragraph as far as my offer is concerned. That is the last paragraph on the page, 127. The balance of it I would like to offer though.

The Court: Of course the whole page is going to have to be photostated and there are many things in each one of these pages that are immaterial, as I have read them. There are things, however, in the text of the whole subject matter which are material, and all this says is that Mr. Dusenbery is objecting to Mr. Bishop's fees.

Mr. Angell: I don't think it says that. I think the Board was raising some question.

Mr. Chapman: You mean they are fighting with each other over fees as well as us?

The Court: I do not think it says the Board is raising any question at all. And certainly if it were going to reflect badly upon any counsel in this



(Testimony of Frank C. Noon.)

case I would not admit it because I do not think it is necessary for the rights of the parties here who are involved, but I do not see how this hurts anybody. If counsel wants to leave it out as being immaterial, I will leave it out. But it is still going to be photostated if it is admitted.

Mr. Chapman: I think I will continue the offer.

The Court: The rest of it is certainly material to the [681] matter of attorney fees.

Mr. Chapman: I think I will leave it in.

Mr. Dusenbery: May it please the court, that is a matter that was identified when I was out at lunch, and I would like to look at it as long as my name has been brought into the matter. I don't know what it says.

(The volume referred to was passed to counsel.)

Mr. Chapman: A complete list was given to all counsel, Mr. Dusenbery.

Mr. Dusenbery: If the court please, if there is any statement in here to the effect that I objected to Mr. Bishop's fees, I fail to find it. I do find this provision: "The directors discussed with Mr. Dusenberry and the president the status of counsel fees heretofore paid by this bank, particularly the statements of Mr. Irving Bishop of Los Angeles. Mr. Dusenbery stated that he had not approved Mr. Bishop's statements for the past few months due to the fact that it was his understanding that Mr. Bishop's efforts were largely in connection with

(Testimony of Frank C. Noon.)

settlement negotiations carried on in activity with the president."

Now, if the court please, the reason that Mr. Bishop's fees were not approved by me is because Mr. Bishop's services were——

The Court: I do not care what your reasons are. The only thing is whether or not it is material. I cannot see [682] where that hurts Mr. Bishop, because it would be a strange set of lawyers, even if you were on the same side of the case, if you did not have a disagreement once in a while. And I do not say that you are right or wrong in objecting or not objecting. The only point I am making is that it does not destroy the materiality of the rest of it, and some of the things in there are material to this hearing, and if you are going to photostat the whole thing you will have to include it.

Mr. Dusenbery: What I wanted to point out, your Honor, is that the minute was misconstrued by your Honor with reference to the statement that I made. I don't think it is in there and certainly it was not intended that anything of that kind should have taken place. I am simply explaining that during the spring of 1949, while the settlement negotiations were going on, Mr. Bishop was active in the settlement with Mr. Holmes, the president of the bank, and for that reason he approved Mr. Bishop's fees and not myself. That is the significance of that statement.

Mr. Chapman: I think I would like to have it in after the discussion.

(Testimony of Frank C. Noon.)

The Court: Especially in view of Mr. Dusenbery's statement.

In any event, page No. 127 of LA-300, minutes of June 19 and 21, 1949, beginning with the words "Report on California [683] Litigation," on that page, and ending with the portion just before the words "lines of credit," on page 128, will be marked for identification as No. 46.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-46 for identification.)

Mr. Chapman: Next is on page 141, "Amendment to By-laws, Indemnification of Directors."

The Court: No. 47, page 141 of LA-300, minutes of August 13-14, 1949, beginning with the words "Amendment to by-laws," and ending with the words, "Mr. Verne Dusenbery left the meeting."

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-47 for identification.)

Mr. Chapman: Page 156 is the next, your Honor, "Change in Bank By-laws." That also deals with indemnification.

The Court: Ending with the next subject matter, "trustee, mortgages"?

Mr. Chapman: That is right.

The Court: No. 48, page 156, minutes of October 24-25, 1949, beginning with the words "Change in Bank By-laws," and ending with the words just before "Trustee of Mortgages" on the same page.

(Testimony of Frank C. Noon.)

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-48 for identification.)

Mr. Chapman: May I see that again, your Honor? [684]

(The volume referred to was passed to counsel.)

Mr. Chapman: Page 162, starting with "Appointment of Counsel for California Litigation."

Mr. Fitting: If the court please, I would like to make an objection with the view of shortening time. As I understand it, no one is joining in these offers, that is, none of the proponents of this motion are joining in these offers of evidence. In other words, they are willing to rest their case on what, as I understand it, is in the record now. I don't see how Mr. Chapman can join in the motions since it is not his attorney fees that are involved, it is O'Melveny & Myers, Mr. FitzPatrick and Mr. Gilbert, so I don't see any point in offering this evidence.

The Court: The last time I recall that Mr. Works and Mr. Gilbert were sitting in the jury box, they said that they joined in all motions and wanted to join in all motions unless otherwise indicated. Is that correct?

Mr. Works: I thought permission to do that was denied.

The Court: I did. I denied it.

(Testimony of Frank C. Noon.)

Mr. Works: I may say that any indications I made before dinner toward joining in any of these offers have been reversed since dinner.

The Court: You do not join?

Mr. Works: I do not join and, as far as I am concerned, it is all cumulative. [685]

Mr. Angell: I am going to move to strike all of the testimony offered by——

The Court: Let us get his offer finished before we start arguing about it. You can argue about it in a few minutes, but let us finish with this book.

This last one here is page 162, minutes of November 16, 17 and 21, 1949, LA-300, and will be No. 49 for identification. It begins with the words, "Appointment of Counsel for California Litigation," and ends with the end of that page.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-49 for identification.)

Mr. Chapman: Next is on page 163, dealing with the examination of the bank, and particularly the paragraph "No reserve for contingencies of Los Angeles litigation."

The Court: That runs way on over. Where is that?

Mr. Chapman: If I may have the book a moment, I can locate the subparagraph number.

(The volume referred to was passed to counsel.)



(Testimony of Frank C. Noon.)

The Court: A mere examination of this would take a great deal more time than I think we have here because it says——

Mr. Chapman: It is just one paragraph, your Honor.

The Court: Let us limit it to that then.

Mr. Chapman: It is subparagraph 1 on page 163, starting with the words, "Examination of the bank."

The Court: The first paragraph? [686]

Mr. Chapman: That is right.

The Court: Paragraph arabic 1?

Mr. Chapman: That is right.

The Court: This is the second entry on this page. This will be No. 50 on page 163, minutes of November 16, 17 and 21, 1949, beginning with the words "Examination of bank as of September 16, 1949" and ending with the end of paragraph arabic numeral 1 on that page, and specifically excluding all of the rest of the report of examination?

Mr. Chapman: That is correct.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-50 for identification.)

Mr. Chapman: Now if I can see page 171 for a moment?

(The volume referred to was passed to counsel.)

Mr. Chapman: On page 171, starting with "Cali-

(Testimony of Frank C. Noon.)

ifornia Litigation" and ending with "Home Loan Bank Board."

The Court: Ending with the next paragraph?

Mr. Chapman: That is right. The end of the page where it says the meeting was adjourned.

The Court: That will be No. 51. It is on page 171 of LA-300 and is the minutes of December 16 and 17, 1949, beginning with the caption "California Litigation" and ending with the words which precede the words "Home Loan Bank Board Resolution." [687]

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-51 for identification.)

The Court: Now you want to go to 172, I suppose, "California Litigation"?

Mr. Chapman: That is right, and ending on page 174.

The Court: No. 52, beginning on page 172 of LA-300, minutes of December 16 and 17, 1949, with the caption "California Litigation" and including the balance of that page, all of page 173, and that portion of page 174 ending with the words which precede the words "release of Portland records."

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-52 for identification.)

Mr. Chapman: 175—

The Court: That is already marked. The defendants introduced that as Defendants' F.

(Testimony of Frank C. Noon.)

Mr. Chapman: On 176, if I may look at it a moment?

(The volume referred to was passed to counsel.)

The Court: "California Litigation"?

Mr. Chapman: That is right.

The Court: No. 53, page 176, minutes of December 16 and 17, 1949, beginning with the words "California Litigation" at the bottom of page 176, and continuing on to page 177 to the words preceding the words "inter-bank deposit."

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-53 for identification.) [688]

Mr. Chapman: Next is 181, "Stockholders Meeting."

The Court: You mean this book really has an end?

Mr. Chapman: Yes. The words "Stockholders Meeting" at the bottom of page 181 and ending on the top of page 182.

The Court: Is that the last one?

Mr. Chapman: It is the last in that book.

The Court: No. 54 is page 181 of LA-300, minutes of January 13 and 14, 1950, beginning with the caption "Stockholders Meeting" and ending at the bottom of the page.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-54 for identification.)

(Testimony of Frank C. Noon.)

Mr. Chapman: That is all for that book. Shall we offer that now or finish with the designation first?

The Court: Inasmuch as those other things are part of the minutes you had better finish your designation. How many have you got?

Mr. Chapman: I have one more stockholders book, one group consecutively of about 10 pages, and that is it.

The Court: And you are offering page 903?

Mr. Chapman: 903.

The Court: 903 of LA-96, dated May 11, 1948.

Mr. Chapman: That is right.

The Court: Was this not offered before?

Mr. Chapman: No, it was not, your Honor.

The Court: Well, if it was not, all right, but it seems [689] to me that it was.

It is marked No. 55, and it is page 903 of what is described as LA-96, and it is dated May 11, 1948, Resolution 721 of the Home Loan Bank Board.

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-55 for identification.)

Mr. Chapman: I think we have one book, Mr. Noon, that is not identified, the minutes of the annual meeting of stockholders.

Q. Have you identified that for us, Mr. Noon?

Mr. Bishop: We will stipulate to his identification of the book, but not as to the evidence or materiality.

(Testimony of Frank C. Noon.)

Mr. Chapman: It is marked LA-87. It is the minutes of the stockholders meeting. I am offering pages 33 to 49 inclusive as one offer.

The Court: I am going to have to take a short recess.

Mr. Bishop: Your Honor, could I be heard a minute? I would like the indulgence of the court and also the indulgence of counsel. I see no reason for Mr. Noon or Mr. Purmort to stay here as representatives of the Bank if all counsel are willing to stipulate that the records may be locked up in that little room over there tonight and released to us tomorrow, because we will have to open up the vault at the bank late hours now, and Mr. Noon is the only one that can do it, and he is serving no gainful purpose here except making himself [690] more and more tired, and he and Mr. Purmort certainly should be permitted to go home if nobody has any different ideas.

Mr. Chapman: I don't disapprove. It is all right with me.

Mr. Sutter: No objection.

The Court: If there is no objection, why certainly Mr. Noon is excused from the subpoena and the other gentleman. The matter of locking them in that closet over there, however, is a different thing. It will be locked in some closet, but I do not know who has a key to that closet.

The Clerk: I have, your Honor.

The Court: Very well. The clerk has. We will lock them in that closet over there then.



Mr. Bishop: Thank you, your Honor.

(Witness excused.)

The Court: This is your last offer?

Mr. Chapman: That is right. It is marked LA-87 in the special master's examination, and it is headed "Minutes of Stockholders Meeting" on page 33, the annual meeting for '46, and runs through to page 45, excluding the glued-in material. In other words, all I want is the typed pages which are actually numbered. There are annual statements in there that we don't need to be concerned with.

The Court: 33 to 45? [691]

Mr. Chapman: 33 to 49 inclusive.

It has been suggested, your Honor, that the annual statements should likewise go in as being reported to the stockholders. I think the annual statements can be subject to no objection. They are certainly public records by now.

The Court: I will mark that No. 56, pages 33 to 49, which appear to be minutes of the adjourned stockholders meetings of the Federal Home Loan Bank of Portland.

Mr. Chapman: That is the annual 1946 meeting.

The Court: June 10, 1946, is the caption, and it is in the book marked LA-87 in the discovery proceedings, and the book is entitled on page 1, "Minutes of Stockholders Meetings, Federal Home Loan Bank of Portland, District 11."

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-56 for identification.)

The Court: Now do you have some other matter to mark for identification?

Mr. Chapman: That closes the identification marking, your Honor.

Mr. Angell: We would like to have one offered, your Honor, marked for identification if the others are allowed in, and that is in Volume LA-300, page 175.

The Court: That is already in. That is your F. That is what you offered and that was received in evidence as 2-27-50-F this afternoon. [692]

Mr. Angell: May I see it, your Honor?

(The volume referred to was passed to counsel.)

Mr. Angell: Is it the whole resolution?

The Court: The whole resolution. You offered down to here. (Indicating.)

Mr. Angell: That is what I thought. I think what we want is to include this "California Litigation."

The Court: That has already gone in—no, that is not in, so we will put in as 2-27-50-G page 175, beginning with the words "California Litigation" over to "election of president and secretary" on page 176.

(The document referred to was marked San Francisco Bank's and Official Defendants' Exhibit No. 2-27-50-G for identification.)

The Court: Now this last exhibit which you offered, Mr. Chapman, it is going to take me a little time to examine. Is this all you are offering now?

Mr. Chapman: That is right.

The Court: Did you have something?

Mr. Westover: Yes, your Honor. I want to join with Mr. Chapman in the offer of the minutes of the annual stockholders meeting of July 29, 1947—that is LA-87 according to the special master's numbering system—pages 37 to 41, that one resolution on those particular pages and the respective votes on it.

The Court: That is part of the exhibit offered by Mr. [693] Chapman.

Mr. Westover: That is right.

The Court: As No. 56.

Mr. Westover: That is right. I want to join with him on that.

The Court: Why not make it simple and join with him in Exhibit No. 56?

Mr. Westover: I will, your Honor. I have no objection to the others. That one I do urge definitely.

The Court: Very well. You can make that argument.

Do you have anything else?

Mr. Westover: Yes, your Honor, I have one more.

The Court: We will have a short recess first.

(Short recess.)

Mr. Works: We join in the offer of Exhibit 56, your Honor.

The Court: Very well.

Mr. Westover: At this time, your Honor, I will

offer LA-52, page 91, the financial statement in the center of the page there showing the condition of the San Francisco Bank as of the close of business March 29, 1946, with total surplus of \$2,868,307, and total combined assets of the two combined banks of \$58,000,000 plus.

I might add the pencil mark on the side of the page was not mine. I have no marks on the Bank's books or [694] records at any place.

The Court: Where do you begin on this page? At the top of page 91?

Mr. Westover: No, your Honor, I think all that I care to offer is that dealing with the financial statement.

The Court: Beginning with "Mr. Johnson presented"?

Mr. Westover: That is correct, your Honor, and ending at the conclusion of the financial statement, just the one paragraph.

The Court: I am a little confused. At the bottom of page 89 of this book, it starts with "Order 5082, March 29, 1946," which is the order which has heretofore been discussed very much in the pleadings and affidavits and arguments and briefs of counsel, and continuing on page 90 it finishes the text of that Order 5082, then beginning at the top of page 91, Order 5083, dated March 9, 1946, and the next caption is Order No. 5084, March 29, 1946, pursuant to Section 25 of the Federal Home Loan Bank Act as amended, and the powers vested in me by law the Federal Home Loan Bank of Los Angeles is dissolved, and it says "Mr. Johnson pre-

sented the statement of condition of the Federal Home Loan Bank of San Francisco as of the close of business March 29, 1946, a copy of which follows. Whereas this March 29, 1946, resolution of 5082 on page 89 and the following Orders 5083 and 5084 are the ones dissolving Portland, creating San Francisco, or rather [695] consolidating Portland and changing its name and dissolving the Los Angeles Bank.

Mr. Westover: Your Honor please, the minutes start several pages earlier. It is the minutes of a board of directors meeting of April 8, 1946. If I may see the book?

The Court: Yes, that is correct; on page 88.

Mr. Westover: Then they apparently have copied in the various orders and various other business before the board of directors, but the particular part that I was offering at this time—because I think those orders are already in the record, all of those orders—but the particular point I wanted to offer at this time was the financial statement as reported by Mr. Johnson, the then president of the purported San Francisco Bank, as of March 29, 1946. It is just that one paragraph showing the surplus they then had on hand and the total assets and liabilities.

It might be less confusing, your Honor—and I have no objection—to taking the entire minutes of that meeting of April 8, 1946, of the board of directors.

The Court: The only thing I have in mind, if this is material in connection with this matter, it makes it a little senseless to pick out this particular



thing in view of the fact that it follows and appears to be a part of Order No. 5084.

Mr. Westover: I am sorry. I didn't interpret it as a [696] part of Order 5084.

The Court: I do not know that it is. It is set up in the same part without an additional caption or heading.

You were about to say something, Mr. Works.

Mr. Works: I have another small matter here, your Honor.

Mr. Westover: Your Honor please, we might clarify it by offering a few more pages, as Mr. Bishop says, to wit, the entire board meeting of April 8, 1946, which begins a few pages earlier.

The Court: There are some things in here that certainly cannot have anything to do with this. There appears to be nothing from the beginning of the minutes of the meeting on page 88 down through 89, 90 and 91, ending with the words "Room 510, Los Angeles, California," which could possibly be subject to the objections which I have heretofore sustained on the ground that there would be a disclosure of confidential information or interfere with the business of the bank.

In any event, the portion I have indicated will be marked as No. 57, beginning on page 88, where I am now marking in pencil, beginning with "Minutes of a special meeting of the board," and ending—that is, covering the balance of page 88, all of 89 and all of 90, all of 91 down to the point where I am now marking in pencil "end 57." [697]

(The document referred to was marked Joint Petitioners' Exhibit No. 2-27-50-57 for identification.)

The Court: Anything else?

Mr. Westover: That is all, your Honor, that I care to offer at this time.

The Court: Mr. Chapman?

Mr. Chapman: That is all on my part, your Honor.

Mr. Works: May I make an offer, your Honor?

The Court: Let us see if Mr. Chapman is through.

Mr. Chapman: I understand that these are only in for identification.

The Court: Up to now.

Mr. Chapman: I want to offer them when Mr. Works has concluded.

The Court: Yes.

Mr. Works: In support of our showing that action No. 5678 and the cross-claim of Los Angeles Bank in action 5421 were brought in good faith and on reasonable grounds, which is one of the issues involved in this matter——

The Court: Excuse me. In support of your claim of good faith?

Mr. Works: In support of our showing that action No. 5678 and the cross-claim in action No. 5421 were brought in good faith and on reasonable grounds, I desire to offer by reference a portion of the verified petition filed on behalf [698] of the Long Beach Association on July 6, 1948, which

asked, among other things, for the dissolution of the San Francisco Bank.

The Court: That is the cross-claim or is that the order to show cause?

Mr. Works: I am referring to the verified petition and motion filed in that connection, your Honor.

Mr. Chapman: That was presented at Fresno and you issued an order to show cause on it.

The Court: Yes, I remember, but there are two phases of that. One of them they have in their cross-complaint and then there has been a proceeding pending by way of a motion for an order of dissolution.

Mr. Chapman: That is the one.

Mr. Works: That is the one I am referring to. It is labeled a petition and motion.

The Court: Very well.

Mr. Works: The filing date was July 6, 1948.

The portions to which I refer are the following—

The Court: Excuse me. Do you think you can find that, Mr. Stacey?

Mr. Works: I have the file here, your Honor. Starting at page 4, line 22:

“That Holders of Shares Representing More Than  $\frac{2}{3}$  of the Voting Power of the Purported San Francisco Bank Have Voted to Dissolve Said San Francisco Bank, if It Ever Existed. That ballots were circularized among such associations, members and stockholders of such bank. That the results of such ballots are summarized as follows:

“Petitioners are informed and believe and therefore allege that there are presently issued and outstanding 116,222 votable shares of stock of the said San Francisco Bank, having a par value of \$100 each, entitled to one vote for each share. That of such shares 84,635 or 72.8 per cent voted as follows:

“(a) In favor of dissolution of said San Francisco Bank:

“79,242 shares,

“68 per cent of the total votable shares outstanding.

“(b) Against further use of Los Angeles assets by San Francisco Bank to litigate against Los Angeles Bank.

“80,310 shares,

“69 per cent of the total votable shares outstanding.

“(c) Against dissolution of said San Francisco Bank: [700]

“5393 shares,

“4.6 per cent of the total votable shares outstanding.

“(d) In favor of further use of Los Angeles Bank assets by San Francisco Bank to litigate against Los Angeles Bank:

“4325 shares,

“3.7 per cent of the total votable shares outstanding.

“That Thereby More Than  $\frac{2}{3}$  of the Total Stock Voting Power of the Said San Francisco Bank, If It Ever Existed, Has Voted for Dissolution of Such Bank and Restoration of the Los Angeles Bank.

“That Approximately 84% of All of the Former Members of the Purportedly Merged Los Angeles Bank Have Thereby Voted Against Such Merger. That the Owners of More Than  $\frac{2}{3}$  of the Assets in the Hands of Said San Francisco Board of Directors Have Thereby Voted Against Said Officers and Directors Wasting Said Assets In Further Litigation.”

This affidavit was verified by Mr. Gregory, who is present and in a position to testify, if desired.

The Court: Do you offer his affidavit as his direct testimony?

Mr. Works: I do, your Honor. I offer it by reference [701] to the verified petition, the petition verified by him.

The Court: Very well. Do you wish to cross-examine him?

Mr. Angell: We want to get in our objection, your Honor, that it is incompetent, irrelevant and immaterial, not within the issue of this case.

And on the furth ground that there is no provision of law for the dissolution of a Federal Home Loan Bank by the vote of its stockholders, that that is given by the act of Congress entirely to the Board or to the then Commissioner.

The Court: Let us keep in mind the purpose for which it is offered.

Mr. Angell: I understand it is being offered to show the good faith.

The Court: Solely to substantiate the claim of the movants here for fees on the ground that they have acted in good faith, but if I sustain your



objection I would decide the lawsuit on its merits. If I overrule your objection on the grounds that you have made them, I would decide the lawsuit on its merits. However, I consider the evidence for the purpose for which it is offered and it may be received for that limited purpose.

Mr. Angell: Are you through, Mr. Works?

Mr. Works: Yes.

The Court: Do you have something else? [702]

Mr. Chapman: Yes. On this last offer that was made, I do not feel it necessary to offer that into evidence because it is in a pleading in this litigation as yet undenied and the time fixed in your order to show cause expired in August of 1949. At that moment and from that time on and now that stands as an admitted allegation in the pleadings in this litigation. I therefore think it is unnecessary to offer it into evidence.

The Court: It is offered and have been received and the objections have been overruled.

Mr. Fitting: In connection with that, I wonder if we might have a stipulation from counsel as to the facts in connection therewith, that I take it are not controverted, namely, that at that time the United States Treasury owned a majority of the outstanding stock in the San Francisco Bank. That is correct, is it not?

Mr. Chapman: No.

Mr. Westover: I wouldn't care to enter into such a stipulation, Mr. Fitting.

Mr. Chapman: Neither would I.

Mr. Bishop: Your Honor, that was shown by the

records heretofore introduced in this court when the stock books were down here before in a previous hearing, so it is before the court.

The Court: Just a moment now. Mr. Works, do you accept [703] the stipulation?

Mr. Works: No, I do not.

The Court: You do not?

Mr. Works: No.

The Court: Mr. Gilbert?

Mr. Gilbert: No.

The Court: Mr. FitzPatrick?

Mr. FitzPatrick: No.

The Court: Mr. Sutter?

Mr. Sutter: No.

The Court: Mr. Chapman?

Mr. Chapman: No.

The Court: Mr. Westover?

Mr. Westover: No.

The Court: Very well. Your offer is——

Mr. Fitting: Turned down.

The second offer is that any stock owned by the United States Treasury at that time or the Reconstruction Finance Corporation was not voted at this meeting or election, or whatever it was.

The Court: Mr. Works, do you accept his offer?

Mr. Works: I do not know what the facts are.

The Court: If you do not know, do you accept it or not?

Mr. Works: I do not accept it, your Honor.

The Court: Mr. FitzPatrick? [704]

Mr. FitzPatrick: I do not.

The Court: Mr. Gilbert?

Mr. Gilbert: I do not.

The Court: Mr. Sutter?

Mr. Sutter: I do not.

The Court: Mr. Chapman?

Mr. Chapman: I do not.

The Court: Mr. Westover?

Mr. Westover: I do not.

The Court: The offer to stipulate is refused.

Mr. Angell: We will ask for time then, your Honor, to produce the facts as to the ownership of the stock in the Los Angeles Bank and the San Francisco Bank.

(Addressing Mr. Bishop): You say they are already in?

Mr. Bishop: They are in evidence and they were exhibited to the court at that time.

Mr. Angell: May we have our answer to that motion for the dissolution of the San Francisco Bank—I think it may be pleaded in the answer.

Mr. Bishop: For the purpose of the record, those stock records were here at that hearing on September 15, 1948, when Mr. Vander Ende was on the stand.

Mr. Works: If it is in evidence, then you have no problem.

Mr. Angell: I want to make certain that it is in evidence. [705]

Mr. Works: I don't know.

Mr. Angell: I don't know either.

The Court: It is not offered in evidence in this case, that is to say, in this proceeding in this case in so far as the application for attorney fees are

concerned. If it is a part of the records and files of this court, I can take judicial notice of it.

Mr. Fitting: First, I think I can clear up the first point. May I offer again in evidence the affidavit of Ernest Riordan, filed in this case?

The Court: We went over that this morning. It was filed September 23, 1949.

Mr. Fitting: Yes. And on the second page of it, beginning at line 15, it says that up to and including August 31, 1949, either the Reconstruction Finance Corporation or the United States Treasury has always been the majority stockholder of the Federal Home Loan Bank of San Francisco, formerly called the Federal Home Loan Bank of Portland, as well as the former Federal Home Loan Bank of Los Angeles.

Mr. Chapman: Your Honor, that kind of a conclusion cannot be evidence.

The Court: I ruled on Riordan's affidavit this morning and it is stricken from the evidence. Your motion to reoffer it is denied. [706]

Mr. Fitting: I offer to re-offer just that paragraph, if the Court please.

The Court: It is denied. If it is part of the records and files of the proceedings, I will take judicial notice of it and you can argue it tomorrow.

Mr. Angell: If it isn't, your Honor, we are going to ask that we be allowed to produce a witness or an affidavit that will set forth the true ownership of the stock in this bank.

The Court: It would rather seem to me that if the United States of America, acting under the au-

thority of the acts of Congress—and that is the only way it can act—purchased and owned stock in a corporation, that the court could take judicial notice of the authority to spend that money and how much was invested in it at any time.

Mr. Angell: It is to furnish the court with the facts so that the court may take judicial notice of it that we wish to produce the true facts. It would seem that the affidavit of Mr. Riordan covers that.

The Court: Personally I do not see how it is material at the moment. It seems to me I read something someplace where the Federal Home Loan Bank of San Francisco was created as a corporation, that it could sue and be sued.

Mr. Angell: I think the act so provides.

The Court: What is the difference who owns the stock [707] then?

Mr. Angell: It makes a difference when you come to——

The Court: There have been lots of judgments sustained by the Supreme Court for the government where they owned all the stock.

Mr. Angell: That isn't the purpose of the offer.

Mr. Fitting: That isn't the purpose of the offer. The purpose of the offer is in connection with this last offer indicating that the majority of the stockholders, or 86 per cent of the stockholders, or whatever the percentage was, voted for dissolution. We were trying to make the point that the government stock, which was the majority of the stock, was not included.

The Court: They did not vote at all.



Mr. Fitting: They didn't vote at all.

The Court: How could they vote?

Mr. Fitting: That is our point.

The Court: How could the government stock vote?

Mr. Fitting: None of the stock is voting stock.

Mr. Works: Your Honor, this is all immaterial. The only showing we made was that such-and-such per cent of the voting stock voted thus and so. If there were other non-voting stockholders, that is irrelevant.

The Court: Yes, it is.

Mr. Bishop: It is right before you in this hearing and [708] uncontroverted.

The Court: I just ruled it is irrelevant.

Mr. Bishop: Well, your Honor, it is before you just for the purpose of the record in the affidavit of Mr. Bogardus, which was not stricken out, because it mentions the total number of shares in our bank, including those owned by the United States of America. That was not stricken, not the first affidavit of Mr. Bogardus.

The Court: I have ruled.

Have you concluded, Mr. Chapman?

Mr. Chapman: I haven't yet offered into evidence the matters marked for identification. I would like to make that offer.

The Court: Do you have anything more, Mr. Works?

Mr. Works: Nothing further, your Honor.

The Court: Mr. Gilbert?

Mr. Gilbert: I wish to join in the last offer that Mr. Works made.

The Court: Very well. It is admitted. The objections are overruled.

You now wish to offer in evidence the matters which were marked for identification, 36 to 56 inclusive?

The Court: 34 to 57 inclusive, according to my records.

Mr. Westover: Your Honor please, I understood that No. 57, the last minutes of the San Francisco Bank including the [709] financial statements, were admitted into evidence, or were those only marked for identification? I understood my offer was admitted.

The Court: Let me see No. 57, Mr. Stacey.

Mr. Westover: No. 57 was LA-52.

The Court: Yes, I remember now. Very well. You offer these all in evidence, 34 to 57 inclusive?

Mr. Chapman: That is right.

The Court: Is there any objection?

Mr. Gilbert: I join in the offer, your Honor.

The Court: Mr. Gilbert joins in the offer.

Mr. Works?

Mr. Works: I will join in the offer, your Honor.

The Court: Is there any objection?

Mr. Fitting: Yes. If the court please, we object on all the grounds heretofore stated, namely, that they are incompetent, irrelevant and immaterial, that to the extent they relate to settlement negotiations they are not admissible as evidence in this hearing, to the extent that they relate to communications from attorneys they are subject to the attorney-client privilege, to the extent that they purport

to relate what members of the Department of Justice, Home Loan Bank Board, have stated they are hearsay and, above all, that they are incompetent and irrelevant.

Mr. Westover: Your Honor, I wanted to join in the offer [710] of 56 and 57 only.

Mr. Angell: The San Francisco Bank joins in the objections made by the Government and the additional ground that none of the exhibits offered tends to prove or disprove any issue in the case; and upon the further ground that the evidence is produced not by the moving parties, but by parties who have no interest in the allowance or disallowance of these fees.

Mr. Chapman: Any further objection?

I would like to reply to the objections, your Honor, for a moment.

The Court: As you have presented these exhibits marked for identification, I have read them, not thoroughly of course but enough to know their content, and in each one I have endeavored to ascertain whether or not there was anything which might relate to or be material to the issue which is before the court, which is the matter of the application for attorney fees.

As I indicated a while ago on a discussion of one of the matters, of course in minutes of a meeting or of meetings such as these, there are things where you cannot segregate entirely the things that relate to the matter under discussion here and the things which do not. But in the minute book, for instance, which comprises most of the exhibits marked for

identification, they are captioned with [711] headings, like "California Litigation," or "Attorney Fees," and the like, and I have been careful to note that all of these matters which have been offered came under what the bank itself, or whoever these minute books belong to, have designated as "Attorney Fees," "California Litigation," and even where they have not specifically mentioned attorney fees in the caption in each one where they have mentioned California litigation or similar subjects they have discussed, or there has been a discussion, of the matter of attorney fees, the payment of them, the amounts, the status of the litigation, the reasons for allowing attorney fees and the like. So it seems to me that they certainly are material and competent.

On the exhibits which have been taken from the exhibit books, which are a portion of the minutes which are—well, they have been described variously from time to time—in other words, the minute books are LA-300 and the exhibit books are LA-91, LA-87, etc., and each one has items which on their face pertain to the matter of attorneys fees.

In the matter of Exhibit 56 for identification and LA-87—before discussing that, however, I will say that Exhibit No. 57 for identification, being page 91 and others from LA-52 of the minutes of April 8, 1946, that they fall within the same category of those that I have been discussing.

Exhibit 56, the stockholders meeting, being pages 33 to 49—— [712]

Mr. Chapman: Those bear on the question of estoppel, your Honor. I think it is apparent from



at least the first two stockholders meetings, particularly the one in 1946 and the one in 1947, that Portland didn't like being merged and were objecting to it, and Los Angeles said they never had been swallowed. The last two deal with attorney fees, the litigation and proceedings.

The Court: To segregate the items which are not material and rule on them word by word or sentence by sentence, I do not think is expected of even the lower courts, within which category I fall. It is sufficient to indicate that there are material things which deal upon this subject within these minutes, that is to say, No. 56, pages 33 to 49 of LA-87, and that there is not anything in these minutes which would come within the ruling under which the court has heretofore in this case excluded minutes or other documents or evidence kept by any of the defendants. That is to say, there is nothing in there of a confidential nature or which would injure the public interest if made public.

Therefore the objections are overruled, and Exhibits 34 to 57 inclusive are admitted in evidence.

(The documents referred to were received in evidence as Joint Petitioners' Exhibits Nos. 2-27-50-34 to 2-27-50-57 respectively.)

Mr. Angell: If the court please, we are endeavoring to find our answer to the motion of July 6th. We know we filed [713] an answer and we are certain it is verified and we haven't been able to locate it.

While they are looking for it, your Honor, I



might ask the court, in view of the fact that they are offering these motions again which are already in the pleadings and a part of the record, I want it clearly understood that it is not necessary to now again offer in connection with this motion for attorney fees the following documents:

Application for motion to impound the promissory note of the Long Beach Association, together with the \$6,300,000 collateral security, the answer and objections that were filed thereto and the order of impound made thereon, and the motion to set——

The Court: I do not quite follow you. You want to be sure about what?

Mr. Angell: That these are to be considered in evidence and to be available for consideration in connection with the motion for attorney fees that is here being presented. These are all pleadings in the case.

The Court: In so far as the entire files and records in this case are concerned, the court may take judicial notice of them.

Mr. Angell: We will offer those in evidence in connection with this motion to make sure they are in. May I have those documents? [714]

The Court: May you have them?

Mr. Angell: Yes. I would like to have them so I can give the dates and the numbers.

The Court: If you will give us the date we will get the documents.

Mr. Angell: I do not have them, your Honor. The motion to impound the funds, which was made,

as I recall, in early 1948. I was not in the case then. Do you have it, Mr. Bishop?

Mr. Bishop: Your Honor, the document which Mr. Angell is referring to was filed in this court on August 24, 1949, and is a verified return to the order to show cause re the dissolution of our bank.

The Court: No, he was referring to something else, Mr. Bishop.

Mr. Bishop: Then I don't know what he is referring to.

The Court: He is referring to a motion to impound.

Mr. Bishop: No, he wasn't.

The Court: Then I do not understand the English language.

Mr. Works: Your Honor has stated several times that you will take judicial notice of everything in there files. That means that these gentlemen can argue from any document they want to.

The Court: Of course it does. [715]

Mr. Angell: That is all we wanted to be sure of.

The Court: As a matter of fact, you can even take the Constitution of the United States and argue from that because I take judicial notice of it.

What time do you want to start in the morning?

Mr. Bishop: Your Honor, to keep the record straight, I think we have all kept pretty good notes about the exhibits that are to be photostated, and I would like the permission to withdraw from the clerk's possession—I think there are two documents that were taken out of these boxes tonight, and be-

fore anybody forgets where they belong I would like to get them back in.

The Court: I only saw one.

Mr. Bishop: How many were there, one or two?

Mr. Chapman: My memory is that we only used one out of the box. It was a hotel bill.

Mr. Bishop: Just the one then.

Mr. Chapman: These are going to the special master for reproduction, I understand.

Mr. Bishop: That is correct.

Mr. Chapman: I would like to have you communicate to him—I think you may see him before I do, he being in your office—that I would like an extra copy photostated of everything that goes into evidence here so that we can take it down to Long Beach and get it into our files. In other [716] words, I want him to make two photostats.

Mr. Bishop: So we may have an understanding, Mr. Chapman, and we don't destroy the record already made, you are willing to pay for the two photostatic copies, one for the court and one for yourself?

Mr. Chapman: That is right.

Mr. Bishop: Then I will further stipulate that before they are released from the special master they must be checked and approved by Mr. Chapman before filing.

Mr. Chapman: That will be fine.

Mr. Bishop: Thank you.

The Court: Mr. Stacey, will you just hand me all those books you have on your desk?

The Clerk: Yes, your Honor.

(The volumes referred to were passed to the court.)

Have you taken any exhibits out of these books on the table?

Mr. Bishop: No, sir.

The Court: Will you look at them, Mr. Chapman? I want to make an order here, a very short one, that will dispose of them.

(Counsel examining volumes.)

Mr. Westover: I don't know whether your Honor is aware of it or not, but many of these books have under the discovery proceedings been examined only for the purpose of these [717] attorney fees, not for the general discovery proceedings as yet.

Mr. Bishop: Your Honor, I don't propose to take these away tonight. They will be here in the morning.

The Court: I understand.

Mr. Bishop: I just wanted whatever was back in its right place.

The Court: If you will just give me all the books from which you have read tonight or offered anything in evidence.

Mr. Chapman: Mr. Westover kept a list.

The Court: LA-87 is the black book. LA-52—

Mr. Westover: LA-52, there were matters in that.

The Court: Yes.

LA-95.

Mr. Westover: There were matters in LA-95-A, book. That is the way it is designated.

The Court: LA-95-A, book.

LA-96.

Mr. Westover: In LA-96 there are matters.

The Court: LA-97 and LA-98.

Mr. Westover: LA-97 and LA-98.

The Court: And LA-300.

Mr. Westover: And LA-300.

The Court: And that is all.

Mr. Westover: May I just check it? [718] LA-90——

The Court: Where is LA-90?

Mr. Westover: It is a separate book. Mr. Chapman has it here.

The Court: May I have it?

(The volume referred to was passed to the court.)

The Court: LA-95, LA-96, LA-97, LA-98——

Mr. Westover: There were matters out of LA-96 and out of LA-97, there were matters out of that.

The Court: LA-52.

Mr. Westover: LA-52, there are matters out of that.

Mr. Chapman: Were there any out of LA-51?

The Court: Nothing in LA-51.

Mr. Chapman: How about LA-59?

Mr. Westover: No, I don't find anything in that in my list.

Mr. Chapman: LA-99, I don't remember whether there was anything in that.

Mr. Westover: No.

The Court: No, I do not recall it.



Mr. Bishop and gentlemen, with relation to the matter of copying the books and records, LA-52, which has been described in the record as that number and from which there have been pages admitted in evidence, and the same is true of the following documents, LA-87, LA-95, LA-96, LA-97, LA-98 and LA-300, all of the items which have been admitted in evidence [719] from these documents, which appear to be records of the defendants, will be photostated under the following terms and conditions:

The records will be returned to the custody of the special master from whom I understand they were received in this proceeding and by him received in connection with the discovery proceedings;

That they will be photostated, in so far as they have been admitted in evidence by the respective exhibit numbers, and the photostats will be forwarded to the clerk of this court and thereafter they shall be returned and kept in the custody of the special master subject to his, or in connection with the, discovery proceedings.

That is to say, in so far as the proceedings in this matter are concerned, they are now released and are subject only to the orders of the special master in connection with the discovery proceedings.

Is that clear?

Mr. Bishop: Well, your Honor, we would like one more order, if it is possible, and that is that as soon as the photostats have been completed—and Mr. Noon requested me to particularly do this—that the last minute book and the last exhibit book im-

mediately be released for return to San Francisco, subject to further call of the special master.

The Court: That is just what I tried to say, that as [720] far as this court is concerned, upon compliance with the order which I have just made, the originals are released in this proceeding; they are produced here from the special master, the special master can order them returned or whatever is going on in the special master's proceedings.

In so far as the exhibit identified here as 2-27-50-33, I do not think that the San Francisco Bank, or the purported or reported or alleged San Francisco Bank, is going to go out of business if this document is not returned to their files. It can remain with the clerk, and if counsel want to substitute a photostatic copy they can produce it or pay for it with the clerk.

What next?

Mr. Chapman: In connection with that order, your Honor, can an extra set of photostats be made? I think I only ordered one, and in trying to keep up with this record we have learned to get extra copies.

The Court: Anybody who wants extra copies of the photostats can secure them from the special master. As far as I am concerned, I am ordering a photostat here in the clerk's office in lieu of the originals and permitting them to release the originals upon substitution of the photostats. There is no objection to any party to this litigation securing photostats of what has been admitted in evidence here.

Mr. Bishop: To expedite the photostating, I would [721] appreciate it if counsel who are here present tonight would indicate if they desire to make any designations other than Mr. Chapman has asked for a copy of all of them so that we can have it done once and don't have to send the books back to the photostaters, or we will never get those two books back to San Francisco.

The Court: All they have to do is make an original and then they can make copies from that.

Mr. Bishop: That isn't the way it works out down there, your Honor.

Mr. Works: If you want a vote on it, we will pass.

Mr. Bishop: Does anybody else want any copies?

Mr. Gilbert: I would like copies.

The Court: This is not free, you know.

Mr. Gilbert: I know that.

The Court: Very well. Then that is settled.

Now has anybody else any evidence to offer?

Mr. Angell: We are trying, your Honor, to ascertain if we could get a stipulation here with regard to the question of whether or not, in connection with these figures submitted in Mr. Gregory's affidavit and offered in evidence, the portions read by Mr. Works, whether in computing the percentage of stock which voted on the various propositions, any ballot had been sent to the United States as an owner of stock in the San Francisco Bank. I do not know whether we [722] can stipulate or whether we will call Mr. Gregory and ask him.

Mr. Works: I am willing to stipulate that no

ballots were sent to the Government. I am not willing to stipulate that the Government was a stockholder. As I understand it, all they have is some kind of a receipt, whereas the member associations do have stock certificates.

Subject to that, and subject also to an objection of irrelevancy, I will so stipulate.

The Court: Yes, I looked at the stock books and I do not recall seeing any certificate issued to the United States.

Mr. Works: I am willing to stipulate, subject to an objection of irrelevancy, that no ballots were sent to the United States Government.

Mr. Angell: I think Mr. Works' statement is correct, subject to checking the answer or the fact if it becomes material, that no actual stock certificate is issued by the San Francisco Bank to the Government but a receipt is issued.

The Court: You mean to the Government or any officer or agency of the United States Government?

Mr. Angell: That is correct.

Mr. Chapman: Including the Reconstruction Finance Corporation?

Mr. Angell: I think that is correct.

The Court: Including any officer or agency of the [723] United States Government, I take it, would include the Reconstruction Finance Corporation.

Mr. Angell: Yes. And the receipt is given to them for the purchase price for the number of shares of stock that they are entitled to.

Mr. Works: Subject to what has been said, we



Now is everybody through?

Mr. Gilbert: Yes, sir.

Mr. Works: Yes, sir.

Mr. Chapman: Yes, sir.

The Court: The movants, O'Melveny & Myers, Mr. FitzPatrick and Mr. Gilbert rest?

Mr. Gilbert: Yes, your Honor.

Mr. Works: Yes, your Honor.

Mr. Chapman: I rest.

Mr. Westover: We rest.

The Court: Title Service Company, do you rest?

Mr. Sutter: We have nothing. We rest.

The Court: The official defendants rest? [726]

Mr. Fitting: We rest.

The Court: And the San Francisco Bank rests?

Mr. Bishop: We closed at noon today.

Mr. Angell: We rest.

The Court: Very well.

Now on the matter of argument, what are counsel's notions concerning the order of argument? I take it that the movants have the burden.

Mr. Works: Mr. Gilbert and I have discussed that matter, and if it is satisfactory with your Honor I will open and Mr. Gilbert will follow.

The Court: How long will you want?

Mr. Works: Your Honor, I am not much of a talker. I think 45 minutes would be ample for me, probably less.

The Court: When you say 45 minutes, that is quite a while to talk.

Mr. Works: If your Honor will limit me to 30 minutes, I think I can finish.



The Court: Here is what I am thinking of. I am just wondering actually what the issues are here to talk about. Is there any question or can there be any question from the evidence in this case as to the value of the services rendered, that is to say, assuming all the other factors being equal?

Mr. Works: I don't want to argue value at all, your [727] Honor.

The Court: Do the gentlemen on this side of the table?

Mr. Fitting: I was not planning to argue value, your Honor.

The Court: Well, then, what are you going to argue about? Who pays it and whether or not the court has the power to order it?

Mr. Works: That is all, and to point out——

The Court: Wherein does the power of the court differ in connection with your application for attorney fees and the application for attorney fees heretofore allowed, in so far as power is concerned?

Mr. Works: There is no difference at all. We are advocating a somewhat different theory, namely, that applicable to a corporation that is opposing a receivership or dissolution and whose assets have been taken away from it, that line of cases. It is side by side with the complaint of the trust fund theory, due process, right of a corporation whose assets have been taken away to have its day in court to defend itself out of funds seized.

The Court: Let me see. You are representing the corporate body if anything was left of it?

Mr. Works: That is correct.

The Court: And the class?

Mr. Works: There are two aspects to it. [728]

The Court: As the shareholders of that corporate body?

Mr. Works: There are two aspects to it, yes, your Honor. Mr. Gilbert's client and our five member associations are in exactly the same position. The Bank, in my thought, is in an even stronger position because of the holdings in the cases that a situation where a corporation has had its assets taken away, it has a due process right to the use of those assets in the hands of a receiver or other custodian to defend itself.

Now in this case you go a step further, the commissioner didn't take over the Los Angeles Bank himself, he didn't appoint a conservator, he did transfer the assets to what we regard as his creature and agent, the San Francisco Bank.

The Court: The Portland renamed the San Francisco Bank?

Mr. Works: Yes, formerly known as.

The principle for which we contend in our view has precisely the same application as if our funds had been placed by Mr. Fahey in the hands of some other creature of his, namely, a conservator. That is the line of argument we are going to take.

The Court: Very well.

Mr. Works: And we are going to point out to your Honor that both our action and our cross-claim are brought in rem, they are actions to remove clouds either under Section 57 and to recover

possession, that in and by these actions we have [729] brought within the jurisdiction of this court not only the funds impounded in this court but every stick of property which the San Francisco Bank holds and which it obtained by certain means from us.

It is our position that that is the fund which it is the duty of the directors of the Los Angeles Bank to defend, first, in rem jurisdiction as to all and, second, the San Francisco Bank is found within this district. Your Honor has jurisdiction in personam of the San Francisco Bank in this very case, and it is our view that your Honor has jurisdiction to make an award direct from the San Francisco Bank to the Los Angeles Bank if you care to. We have petitioned for an allowance out of the funds deposited in court or, as your Honor may otherwise direct.

I am merely indicating my views on the matter.

The Court: Very well. I see your position. And you want about 45 minutes?

Mr. Works: I don't think I will need that long now. I have pretty well argued the matter.

The Court: I may want to ask you some questions.

Mr. Works: I was making some allowance for that, your Honor.

The Court: I see.

Mr. Works: The rule we invoke is that set forth in *Anderson v. Great Republic Life*, which I think has undoubtedly [730] been cited to your Honor, *Eggert v. Pacific States*—that was a case

which I happened to be quite familiar with, where Judge Henry Willis imposed jurisdiction in personam upon the California Building & Loan Commissioner and made him pay over in a decision where Pacific States defended in a case where the Commissioner was disqualified. I will also have something to say about the Eggert case.

It has got to be that way, your Honor, because otherwise a public officer by the simple expedience of confiscating a home loan bank's assets could simply hamstring it from ever defending itself. That is the position we take as far as the Bank is concerned.

I hadn't intended to duplicate Mr. Gilbert's argument as to the position of the six associations, his one and our five.

The Court: I am not asking you to make your argument now; I was trying to get at what you were going to argue about.

Mr. Works: I have given a pretty good outline of it just in these few minutes, your Honor.

The Court: Yes, very well. And you say it may take you 45 minutes to develop that?

Mr. Works: Yes.

The Court: How long do you want, Mr. Gilbert?

Mr. Gilbert: No longer than that, your Honor.

The Court: You mean no longer than his 45 minutes? [731]

Mr. Works: I think I can do it in less time, your Honor.

Mr. Gilbert: Thirty minutes, perhaps.



The Court: And you do not want to argue at all, Mr. Chapman?

Mr. Gilbert: Yes, he does.

Mr. Chapman: Your Honor, I would like to come in last, if I can, when everybody is tired out and I know I will have to do it in probably 15 or 20 minutes. But we have a position to take, and if we may have just a few minutes I would like to explain it. We were taken over in the first place and we managed to get our attorneys some attorney fees twice, with a fight each time, and we are now threatened to be taken over the second time, still fighting for the Los Angeles Bank. We are quite interested in seeing the Los Angeles Bank get enough attorney fees to do some effective fighting for itself. It might help save some of our hide.

The Court: How long will the Government want?

Mr. Fitting: Not longer than 10 or 15 minutes, if the court please.

And in connection with Mr. Chapman's argument, I think he should speak with the moving parties.

Mr. Dusenbery: We will want some time, your Honor, to answer Mr. Works' argument. We take a little different view of the fund principle of law involving this question now before [732] the court than Mr. Works does.

The Court: From your point of view, will your argument be directed to the question of argument?

Mr. Dusenbery: I think it goes to that question, your Honor. I will try to keep it within that framework.



The Court: How long will you want?

Mr. Dusenbery: I think it can be developed in 30 minutes, perhaps less.

The Court: Shall we start then about 9:00 o'clock in the morning?

Mr. Works: Your Honor is writing the ticket, as the saying goes.

The Court: I do not want to keep you here all day tomorrow but if counsel are going to use up the time they have expressed, 30 minutes, 30 minutes, 30 minutes, 30 minutes—that is two hours.

Mr. Angell: I wonder if we started at 10:00 o'clock if we couldn't finish by noon. Probably we won't argue as long as we think.

Mr. Chapman: That will be the first time that happened.

Mr. Angell: It is pretty late now, your Honor.

The Court: Very well. We will recess until 10:00 o'clock tomorrow morning.

Mr. Chapman: Before you leave, your Honor, I want to say just one more word. We kept you here until 11:00 o'clock and [733] I want you to know that I tried for a solid month to get this done in daytime hours.

The Court: Let us not start another argument.

Mr. Chapman: That is in the form of an apology for keeping you here until 11:00 o'clock at night.

The Court: Recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 11:20 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Saturday, April 8, 1950.) [734]

April 8, 1950; 10:00 A.M.

The Court: Are there any ex parte matters?

The Clerk: No, your Honor.

The Court: Are you ready to proceed with the argument?

Mr. Works: Yes, your Honor.

### ARGUMENT IN BEHALF OF THE LOS ANGELES BANK

The Court: I read the Eggert case and the Ferguson case, and I understood you to say last night that they supported a proposition that this court should award fees and assess them against the funds now in the hands of the San Francisco Bank.

Mr. Works: On the in personam series which was set forth in the Eggert case; yes, your Honor.

San Francisco Bank is in this position, that it was personally served and brought into these actions. It is here, there is no question about that, in personam.

The Court: And it is authorized to sue and be sued under the Federal statutes?

Mr. Works: Yes, your Honor.

The Court: Authorizing its creation and operation?

Mr. Works: Exactly.

Our position, your Honor, is that your Honor has in rem jurisdiction over all of the assets which were, let us say, taken from Los Angeles to San Francisco. Your Honor also has [737] in personam jurisdiction over San Francisco.

The Court: To order it to do a personal act?

Mr. Works: Exactly, to compel it to obey the mandates of the court of equity.

The Court: Concerning the property in rem?

Mr. Works: In rem; exactly.

The Court: The case supports the proposition that a corporation, even though it may be a public corporation, may be sued in personam?

Mr. Works: I don't think there is any question about that, your Honor. They are a corporation entitled to sue and be sued just like anybody else, whether they partake of a public nature or not. They have no greater standing at any time than a national bank and they are sued all the time.

The Court: These funds in the Eggert case were not in what corresponds to our registry of the court; they were in the hands of the State Building and Loan Commissioner.

Mr. Works: Exactly.

The Court: Who was——

Mr. Works: Who was a neutral in that case.

The Court: He was in possession of them as a liquidator.

Mr. Works: Exactly. He had been engaged in liquidating Fidelity for a number of years and he was in possession of the assets of Pacific States at the time while an action was going on San Francisco wherein Pacific States was trying to get [738] the assets back, but the Commissioner had them all on both sides. He intervened in the Eggert case and Judge Willis held, and the District Court of Appeals affirmed, that he had in personam jurisdiction to compel the Commissioner to disgorge.

I might say, your Honor, in that connection Judge

Henry Willis wrote an opinion in the lower court which expresses exactly the theory we have in mind and which we are discussing now.

The Court: Was that reported?

Mr. Works: It is not reported, but it is in the files of that case. However, it does state exactly the position which we maintain here, and I would like to adopt Judge Willis' views as our own in this case.

The Court: Do you want to file it as part of your brief, or is that your last copy?

Mr. Works: No, we have other copies. I thought I might read it, if I may.

The Court: Very well.

Mr. Works: "I am satisfied that this court, sitting as a court of equity in this case with all the powers of a court of equity at its command, has the inherent power to fix and allow the compensation of attorneys for the Pacific States, and to order the payment thereof as a preferred claim [739] by the Commissioner out of the assets of Pacific States now in the possession and exclusive control of the Commissioner, of whom this court has jurisdiction in re personam.

"It was the general duty of the Pacific States as a corporation, and of its officers, to take all reasonable means for the protection of the interests of the corporation and its stockholders and investment certificate holders against the claims and demands of the plaintiffs in this case. (Dingwall v. Seymour, 91 C. A. 483). This was a continuing duty after the takeover of March 4, 1939. This duty was dis-

charged herein in good faith and the defense against plaintiffs' claims was based on reasonable grounds. And, in the exercise of what appears to be a sound discretion in view of all the facts and circumstances in this case, the expense and compensation of defendant's attorneys should be ordered paid out of its assets over which it now has no control. (Citing cases.)"

The Court: What cases?

Mr. Works: Goodyear Tire & Rubber Company v. United Motor Company, 103 Atl. 471; Anderson v. Great Republic Life Insurance Company, 41 C. A. (2d) 181.

Judge Willis then went on to say: [740]

"The Pacific States, as defendant, had the constitutional right to be represented throughout the trial and proceedings by counsel of its own choosing, notwithstanding the takeover and intervention by the Commissioner, and its duty to pay the reasonable value of their services is established by fundamental law. And it lies within the jurisdiction of this court, in which such services were rendered, to fix and order paid the value thereof, and it becomes the duty of the court so to do if, in the exercise of a sound discretion under all the facts and circumstances of the case, it clearly appears just and equitable that such order be made. (Citing Anderson v. Great Republic Life Insurance Company, *supra*.) Otherwise, Pacific States would be 'hamstrung' in any effort to defend itself, as said in the Anderson case."

Now I will refer to the Anderson case a little later, if I may. But those views expressed by Judge



Willis in the trial court stage of the Eggert case express exactly the views which we have here.

The rule is simply that where the resistance of a corporation to receivership or dissolution proceedings—that is where we are—is made in good faith and on reasonable grounds that allowance of attorney fees to it out of the [741] funds in the possession of, say, a conservator or a receiver, may be made where, as I say, the defense is made in good faith and on reasonable grounds.

The Court: The fact that the Pacific States was in a long process of liquidation or dissolution by the State Building & Loan Commissioner does not, or does it, distinguish the fact that the dissolution and liquidation of the Los Angeles Bank was instantaneous.

Mr. Works: I hardly think the time element is important, your Honor. The principle, to my mind, is exactly the same. Under the act Mr. Fahey could have put the bank in the possession of a conservator. Now instead of doing that he saw fit, by these three magic orders——

The Court: If he had had lawful grounds.

Mr. Works: Yes, of course. I am simply talking about the power under normal circumstances.

Now instead of doing that, by these three magic orders which we have heard so much about he simply transferred the assets to his creature and agent, the Portland Bank. And your Honor will bear in mind that the Portland Bank never paid a dime for those assets, not one dime.

The Court: The minutes yesterday I recall recited that the board of directors of neither the Portland Bank nor the Los Angeles Bank had any meeting, or the stockholders, nor ever voted [742] on it.

Mr. Works: Exactly. It is purely a creature situation. That is the point I am trying to establish, your Honor.

The Court: Let me see now. One of the three orders said that the Los Angeles Bank is dissolved.

Mr. Works: Order No. 3, I believe.

The Court: Yes. It is dissolved. That is the short of it.

Mr. Works: Yes.

The Court: That was the order creating or transferring the assets.

Mr. Works: Yes. The order making two states into one state, as I recall it.

The Court: Where are those three orders?

Mr. Works: I have them in my briefcase.

The Court: They are all set forth in some order here.

Mr. Chapman: They are in your preliminary injunction.

Mr. Angell: They are pleaded in the Long Beach complaint.

Mr. Chapman: I think we should take those that are in the pleadings, Mr. Westover. They are certified by Mr. Ammann.

Mr. Gilbert: I have a copy of them in the footnote here.

The Court: Of the three of them?

Mr. Gilbert: Yes, I have copies of them in the footnote.

The Court: This is in the injunction [743] order?

Mr. Gilbert: Yes.

(The document referred to was passed to the court.)

The Court: Mr. Works, there is a provision in the statute with relation to the Home Loan Bank Board, Federal Deposit and Insurance Corporation, is there not, that the Federal Deposit and Insurance Corporation shall be appointed a liquidator?

Mr. FitzPatrick: That is with reference to Federal savings and loan associations, your Honor.

The Court: What is this?

Mr. FitzPatrick: A Federal home loan bank.

The Court: What is the difference?

Mr. Works: There is a conservator power as regards the home loan banks in any event, your Honor. But instead of doing that, the commissioner, for reasons of his own, threw the assets into Portland without any consideration being paid by anybody, without action being taken by either board of directors, the result being that the San Francisco Bank at the present time is simply a constructive trustee of our assets, which gives your Honor another ground of equitable jurisdiction.

The Court: Very well. You were coming to *Anderson v. Great Republic Life*.

Mr. Works: Yes.

The rule and the reason for the rule is about as well [744] stated in that case as any.

“It is a general rule that where an application has been made for the appointment of a receiver for a corporation, attorneys’ fees and expenses in resisting such application, if made in good faith and upon reasonable grounds, may become a valid claim against the receiver.”

Or, as here, one who stands in the shoes of a receiver or conservator, namely, the San Francisco Bank.

“Whether such attorneys’ fees and expenses are to be allowed rests in the sound discretion of the court, in view of all the facts and circumstances.”

And there the court cites a note in 89 A. L. R. 1531, which I have here if anybody wants to refer to it.

“If allowed, the question as to the amount thereof is likewise addressed to the sound discretion of the court. The claim of the officers of a corporation or of attorneys employed by them to be paid out of the funds in the hands of the receiver is not an absolute right, but it is entirely in the discretion of the court administering the fund to determine, first, the good faith and justification of such application, and, second, if warranted, the amount to be allowed. (Citing *Esarey v. Pierson*, 84 Ind. App. 109 (141 N. E. 87.)) ‘Even if [745] it turns out that a case is made for the interference of the state, so long as the defense was made in good faith and upon reasonable grounds, there is apparent

justice in subjecting the property and fund involved in the litigation to expenses incurred in discharging a general duty cast upon the corporation and its trustees, to take all reasonable means for its protection.' ”

The Court: What was the duty on the conservator—not the conservator, I do not know what you would call it—the dissolution was instantaneous and its liquidation of the Los Angeles Bank. All the assets were transferred to the San Francisco Bank. Now what was the duty there? This points out that if there was a duty on the part of a receiver, liquidator or conservator then attorney fees may be allowed to one who compels the performance of that duty.

Mr. Works: The duty, your Honor, if I may say so, runs the other way. The duty lies upon the directors of the Los Angeles Bank to resist such a seizure by every means at their power, which includes the institution of litigation for that purpose. That is the duty which is being referred to here.

The Court: I see.

Mr. Works: It talks about “subjecting the property and fund involved in the litigation to expenses incurred in discharging a general duty cast upon the corporation and its [746] trustees, to take all reasonable means for its protection.” And it cites *People v. Commercial Alliance Life Insurance Company*, 148 N. Y. 563, 42 N. E. 1044.

In other words, if your Honor please, the directors of the Los Angeles Bank owed a fiduciary duty to their members to do everything in their power to



right this wrong. That is the kind of a duty which these cases talk about.

The Court: I see your point.

Mr. Works: Now the main objection raised here, as I see it, it is said that an interim allowance is not warranted because——

The Court: Just a moment, while I am still on this subject. Your theory is that there can be no distinction then between a conservator, liquidator, building and loan administrator and a sucessor?

Mr. Works: Exactly, especially where you have a successor who takes without consideration of any sort. That just makes it more apparent.

The Court: And instantaneously without opportunity for the board of directors of either corporation or their stockholders to be consulted or to express themselves, or the officers?

Mr. Works: Yes, your Honor. The greater vice of the instantaneous situation is that it is an attempt to deprive us of our day in court so that five minutes after this [747] instantaneous action occurs they attempt to claim that we have no status to sue because we are no longer alive. That simply points up the vice of such an instantaneous transfer as this, and it may give some indication as to the reason why that method was attempted. But that is a matter of interest from the general evidence.

The Court: I see your position.

Now you were moving to another point?

Mr. Works: I was going to say, your Honor, that one of the main grounds of objection here raised by our friends on the other side is that an

interim allowance may not be allowed, so they say, because an allowance of fees just depend upon success in the litigation.

Now the answer to that is that success, ultimate success or failure, has nothing whatever to do with the rule which we invoke.

The Court: I do not think that you need to spend any time on that, counsel. That point has been extensively argued and thoroughly briefed in connection with application for fees heretofore made. As a matter of fact, I recall in one of the briefs—I cannot lay my hands on it at the moment—a chart was prepared showing allowance of fees where they were interim and the litigation failed, where they were unsuccessful.

Mr. Chapman: Do you want me to find [748] that?

The Court: Yes, if you will.

Mr. Works: I was simply going to point this out, your Honor: The Eggert case is the star example of that type. That case was well lost. I lost it myself personally, and the liability was \$3,500,000. So success has nothing to do with it. The issue is, as I have said before, whether the resistance is made in good faith and on reasonable grounds.

Now our complaint in the Los Angeles action and our cross-claim in the Long Beach action each show on their face that the action and cross-action are brought in good faith and on reasonable grounds. They directly charge wrongful acts upon the part of the administrator.

In addition to that, late last evening we intro-

duced the petition of July 6, 1948, which showed that over two-thirds of the present stockholders of the San Francisco Bank were in favor of a return of the assets to the Los Angeles Bank. I am not going to labor this point. That is a matter for your Honor to decide on all the evidence in the case, whether the action and cross-action were instituted in good faith and on reasonable grounds.

We submit, with all deference, that there can only be one answer to those questions, and that is that the action and cross-action were so instituted and are so being maintained to right a wrong. That doesn't mean that your Honor has to decide a single question on the merits of this case, [749] not one. The case can be decided either way. The only question is, are these actions being prosecuted in good faith and on reasonable grounds, and we submit that they are. We are perfectly willing to leave that question to your Honor's decision as a chancellor sitting in equity.

Now I have already given my views as to the source of the award, in rem jurisdiction over all, in personam jurisdiction as to the bank to compel it to do whatever your Honor sees fit to order.

Now I touched a moment ago upon another claim of our friends on the other side. They say, first, that the Los Angeles Bank having been dissolved had no power to employ attorneys and, second, because of such asserted dissolution the receivership rule doesn't apply.

The Anderson case answers that contention very

fairly also, and I would like to refer to it briefly for that purpose if I may.

“One of the arguments advanced by appellants should not go unnoticed, because of the implication therein. Appellants argue that since respondent was employed after the insurance company had been restrained from transacting any business or disposing of any of the assets and since the commissioner was appointed conservator of the insurance company shortly after respondent was so [750] employed, the insurance company lacked the capacity to contract and it likewise lacked the capacity to impose a lien or charge upon the assets in the custody of the conservator by authorizing an attorney to render services to it. If such an argument were valid, the result would be obvious. An insurance company proceeded against by the commissioner would be hamstrung in any effort to defend itself, the hands of its directors would be tied and there would be no effective recourse from unwarranted official action. If this were the case the effect would be to deny the company the right to counsel and hence to due process of law. Since in such a proceeding as this all the funds of the corporation are placed in the hands of the conservator, an arbitrary denial to the corporation of the use of any portion of such funds to pay attorneys' fees amounts to the same thing as a denial of the right to contract for the services of an attorney, the effect of which would be a denial of the right to defend at all.”

I think that completely answers our friends' argument in that regard.



Indeed, your Honor, I think it is quite evident that their argument in this regard proves too much. It must [751] necessarily be the thesis of the other side that an administrative officer may rely or wrongfully destroy a financial institution and then by the simple expedience of confiscating its assets utterly prevent a judicial review of the official's action.

The Court: I think that is the position of the defendants.

Mr. Works: I think it is too. And there is such a thing as due process under the Fifth Amendment.

The Court: That this court has no power, that the Board, either acting as however it was constituted, one man or more, had absolute power over these various associations without any right to court review.

Mr. Works: In other words, that the Commissioner or the present Board are judicially untouchable. That must be their position.

The Court: Also witnesses, according to the rule which I read down there one day at the discovery proceedings. If they tell a witness he cannot testify, he cannot testify.

Mr. Works: I remember that one.

Now other grounds of resistance to the application concern assertions of estoppel and acquiescence and whatnot arising out of dealings between the various associations and the San Francisco Bank. These assertions are met by a very common sense defense, it seems to me, that the San [752] Francisco Bank was the only home loan bank in the dis-



trict that any of these associations could deal with, and there are on record also protests as to the fact of their having been compelled to deal with the San Francisco Bank. There is in the record a vote of over two-thirds of the stockholders of the San Francisco Bank, indicating their desire that the Los Angeles Bank be restored.

On the merits, I don't think very much of the so-called defenses of estoppel and acquiescence. But there are two things I want to point out in that regard. First, these assertions of estoppel and acquiescence have nothing whatever to do with the Los Angeles Bank. They do concern the member associations. And, second, these assertions are matters, your Honor, which go entirely to the merits of the action and which may ultimately be tried by your Honor on the merits, but they have nothing to do with what is really a collateral proceeding such as this. They cannot ask your Honor to try this case now upon an interim application for attorney fees, and yet that is precisely what they are attempting to do, and if I understand your Honor's rulings yesterday that was the reason why your Honor struck out those affidavits, because they are attempting to have you try the case in advance.

The Court: I struck them out on the grounds which I stated for the record at the time.

Mr. Works: Exactly, and the record will [753] show.

Now we also represent five member associations who sue on behalf of themselves and all others

similarly situated. Originally there were six and Mr. Gilbert now represents one of them.

The Los Angeles Bank, by the very nature of things, also sues on behalf of its stockholders. That must be so. So your Honor has the feature of class representation here in addition to this receivership fund or doctrine which I have been talking about, the right of a corporation to defend itself even when its hands are ostensibly tied behind it.

Mr. Gilbert, as I understand it, will present the matter from the standpoint of the associations, and I will not attempt to duplicate his argument.

The Court: Mr. Works, is there any ground of distinction between the situation here and that existing in *Sprague v. Ticonic Bank* where the depositors sued the—I do not know what they called them—a receiver of a bank?

Mr. Works: I know what your Honor has in mind. One depositor sued and established by principles of *stare decisis* that claimants in 14 other trusts were likewise entitled to recover.

The Court: What I have in mind now, is there any distinction between the San Francisco Bank now having all of the assets which were held by the Los Angeles Bank and the receiver of the—I think there were two banks involved— [754] anyhow, the Ticonic Bank, who had in his possession all of the assets of the Ticonic Bank?

Mr. Works: I say that there is no distinction at all.

The Court: Except here there was an immediate liquidation, instantaneous dissolution. In other

words, if from the time of the adoption of the orders on March 29th there had been a conservator appointed or a receiver, and during that period of time this same lawsuit had been filed by the Los Angeles Bank or by the shareholders representing the class members, then your case would be squarely within the doctrine of the Eggert case, Winslow v. Ferguson, Sprague v. Ticonic Bank and the Anderson case.

Mr. Works: There is another one that is equally good along that line, and that is a Washington case where that precise situation happened. They applied for a receiver and for an order of dissolution there, but the corporation did have its day in court. The only effect of this immediate seizure, as I see, the immediate takeover, was to enable them to set up a smokescreen that the corporation no longer had power to defend itself. Now if that be a distinction as regards the Sprague case, it is a distinction in our favor.

The Court: Now you say there are two grounds, good faith and reasonable grounds.

Mr. Works: That seems to be the rule as laid down universally, your Honor, in cases of this [755] sort.

The Court: Of course they almost mean the same thing.

Mr. Works: I think so. A meritorious lawsuit, whether you ultimately win or not, a meritorious lawsuit to start with. That is the rule, as I understand it.

I might direct your Honor's attention to the

Washington case of *Watson v. Johnson*, 24 Pac. (2d) 592, where fees were allowed after the ultimate dissolution of the corporation, after the matter had gone through the courts of Washington, the fees were allowed to counsel for defending the corporation in that proceeding.

They lost. The corporation was finally dissolved. But the fees were awarded to the attorneys after the dissolution upon the very principles which I am discussing here.

I mention that because there was a situation where there was an orderly procedure. It was an application for receivership and for an order dissolving the corporation. The corporation appeared. They went through the courts of Washington. The Supreme Court of Washington finally affirmed the lower court's order of dissolution. The corporation was then legally dead. Nevertheless an application for attorney fees for services in giving the corporation its day in court was made and was affirmed by the Supreme Court of Washington in this case. It falls into the same general pattern.

Now I think I should explain our views, your Honor, to the situation here as regards our representation of both the [756] Bank and the five member stockholders. It is our feeling that everything done for the Bank enures directly to the benefit of all of our stockholders, not one or two or five, but all of them. And it is our feeling also that an award to the Bank would take care of any and all services which also enured to the benefit of the member corporations.



The Court: In other words, that Mr. Gilbert should not have any?

Mr. Works: No, I don't mean to say that, your Honor, at all. I am saying that as to the five associations whom we represent.

The Court: Whom you still represent?

Mr. Works: Whom we still represent.

The Court: You are not contending that any one of the individual associations did not have their individual right to secure counsel in an effort, as Sprague did in the Ticonic Bank case?

Mr. Works: Of course not. I am simply saying this, your Honor: Everything we have done in this case for the Bank has enured to the benefit of those member associations, and I am simply saying that to avoid a doubling up of fees for doing the same work it is our feeling—your Honor may not agree with us—that an award to the Bank would also cover any and all services rendered for the associations.

Now Mr. Gilbert is not in that position at all because [757] he doesn't represent the Bank, he has been working for Wilmington and Wilmington alone, and I certainly don't want to have any implication here that I am saying that Mr. Gilbert is not entitled to compensation for the excellent services he has rendered the Wilmington association since he has been in the case. But I am just trying to make my point clear, that in our case the Bank and the five members, all or each, represent all the associations. The Bank represents them all. It has to.



The Court: "All" includes the Wilmington association, does it not, all associations?

Mr. Works: Your Honor, not where Wilmington severs itself from the representation and appears in its own behalf. Perhaps I should have made that distinction sooner.

The Court: Well, your point is you are not requesting an allowance to you for services rendered to the Bank, a separate amount for the services rendered to the five associations, as class members?

Mr. Works: That is right. Under our peculiar situation here I think an award to the Bank would take care of the five.

The Court: I would not waste any time on that. I did not intend to go into that.

Mr. Works: But in the case of Wilmington, they have severed themselves from the representation and appeared by [758] their own counsel and their own counsel is entitled to be compensated. It is as simple as that, it seems to me. However, I will let Mr. Gilbert express his own views.

Thank you, your Honor, for your patience.

The Court: Mr. Gilbert. [759]

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## ARGUMENT IN BEHALF OF THE OFFICIAL DEFENDANTS

Mr. Fitting: May it please the court, our first objection is, of course, to the allowance of any of these counsel fees on the usual jurisdictional grounds.

The Court: You filed a memorandum?

Mr. Fitting: We filed a memorandum.

The Court: I found that a while ago.

Mr. Fitting: It was filed.

The Court: September, 1949?

Mr. Fitting: No, we filed one on February 23, 1950. [772] That was specifically in response to Mr. Gilbert's motion, but it more or less incorporates and brings up to date our arguments on both matters.

The Court: I do not seem to have it here.

Mr. Fitting: Stated briefly, they are that members of the Board are indispensable parties to the action and the Board members have not and cannot be duly sued or served in these actions because they are not residents of California and have never been served in California.

They can't be served as non-resident defendants under 28 U.S.C. 1655 since the action is not one to enforce or remove a lien on property located within the state of California. And the relief prayed for cannot be granted save by decree in personam against the Board members. And that the Board members have never made a general appearance in the action or otherwise submitted to the jurisdiction of the court.

Further, that neither the Home Loan Bank nor its shareholders have any justiciable interest sufficient to maintain the action, that it is also an uncontested suit against the United States, that the

actions are a collateral attack on administrative orders complained of in the action, and that the matters involved in the administrative orders here are within the exclusive primary jurisdiction of the Home Loan Bank and the parties have failed to exhaust their administrative remedies. [773]

The Court: All of those matters I have heretofore ruled on, and I do not know that it would be necessary to pass on them in connection with this application for fees. In any event, I have heretofore ruled on them in connection with the whole litigation and my rulings will stand.

Mr. Fitting: Also our objection under the interpleader statute on the grounds that that statute does not justify this action.

We further contend that the awarding of any fees at this time is inappropriate, first, because there is no adjudication that any parties are entitled to prevail on any branch of this case, relying on the cases primarily cited in our memorandum starting on page 3.

The Court: *Sprague v. Ticonic Bank*, which I think holds to the contrary; *Thomas v. Pizer*, *Standard Lumber v. Interstate Trust*, and those on page 4?

Mr. Fitting: That is correct.

In addition, it would appear that the Eggert case is distinguishable. The case there awarded fees to an unsuccessful party taking into consideration all the factors in the case, and there again after the case had been terminated, so that all the factors involved in the litigation, all the questions, the

merits of those contentions, after they were argued was before the court. Even so, the Eggert case again is a liquidating case, and is a case contrary to the general [774] current of the Federal cases cited in our memorandum. Further, the Eggert case doesn't say that in a case where there was no jurisdiction in the court that attorney fees should be allowed.

We also urge that the court not rule on attorney fees at this time on a very practical ground, and that is, that there is an appeal pending which the Government is attempting to expedite and push along at the fastest pace possible which will determine, we hope, once and for all, the jurisdictional questions raised here. So that once that appeal is decided the court can be in a better position to know just how the case in this court stands.

The Court: Suppose it were decided in the appellants' favor, then under the Eggert case I still would have the right to compel the payment of fees, would I not?

Mr. Fitting: No, as I understand the Eggert case, that does not hold that you can award attorney fees before the end of the litigation.

The Court: But it held that if it ended wrong you could allow fees to the fellow who was on the wrong end.

Mr. Fitting: If taking into consideration all the factors in the case, all the facts developed, it appeared then to the court in the exercise of its equitable discretion that the fees should be granted. Certainly if any court is going to award fees to an



unsuccessful party, they should wait [775] until the end of the trial and do it so that they can have before them the entire litigation. We don't think that fees should be awarded to an unsuccessful party, and to determine whether a party is or is not successful we do have to wait until the end of the litigation.

The Court: The litigation such as this would end very suddenly because—well, unless some firm were in a position, such as Mr. Morrow described, where they were financially able to carry the burden of the case. If this were ordinary litigants and ordinary law firms the litigation would end on the first appeal because the lawyer probably, on the first appearance, because the client could not afford to pay the lawyer and the lawyer could not afford to work for nothing.

Mr. Fitting: There again, if the court please, before the court can decide whether anything of that sort should be awarded to counsel, it has to make a very basic determination as to the reasonableness of the entire litigation. Our objections go both to that, and to the legal authorities here cited.

Now on the question of the good faith and the reasonableness of the litigation, in the first place, one of the pieces of evidence relied on particularly, presented last night, was a petition filed on July 6, 1948, almost two years after the original suit was commenced on behalf of the Los Angeles Bank, presumably to show good faith at the time the litigation was [776] instituted two years before. That particular petition purports to show and recites that



more than 50 per cent of the voting power of the Bank was in favor of restoring the Los Angeles Bank two years after the action was instituted. That raises some serious questions concerning the power of the Bank, and I would like briefly to point out to your Honor just what the powers of the stockholders are in this bank and how again this case differs from all the other cases in that the bank is, in fact, a branch or arm of the Government.

In the first place, the only voting powers that the so-called shareholders in the bank have is the power to vote for directors. Each institution has one vote for each of four directors.

The Court: Is that not a pretty valuable power?

Mr. Fitting: It is a pretty valuable power.

The Court: In other words, is it not the equivalent of you deciding where you were going to put your money? In other words, you decide you are going to put your money in a bank across the street, or leave it to Mr. Reinos, who sells *El Tiempo* for seven cents every morning on the corner. You decide in favor of the bank. Now suppose the bank turned it over to *El Tiempo*, Mr. Reinos there, and he spent it. You would have lost control of your money.

Now by the same token, when the directors or the depositors of the money in the Los Angeles Bank determine whether [777] or not Mr. Reinos, who sells *El Tiempo*, is going to have charge of it or somebody who knows something about the business.

Mr. Fitting: Let me explain further the difference between this bank and the ordinary bank.

Eight of the directors are elected in that fashion, by institutions voting, not by stock ownership, but by membership.

The Court: I understand.

Mr. Fitting: One institution has one vote, so that this so-called plebiscite is meaningless from that point of view. In other words, your stock ownership depends on two things: to join the bank you have to have a certain stock ownership, and also the amount of stock ownership you need is also tied into the amount of money you buy from the bank. So as is frequently the case, the persons with the highest stock ownership are the persons that either in the past have or now have outstanding large loans from the bank. In other words, the people who owe the bank the most.

Four directors are selected by the Government. Those four are chosen by the Government. Originally the Government, as in this bank, the Government owned more than 50 per cent of the stock. There is a provision in the Act for that stock to be gradually retired until the Government stock is all retired, and in spite of that the Government would still retain its four public interest trustees. [778]

All powers of the bank under the statutes, Section 1432, and all acts done by the bank, are subject to approval of the Home Loan Bank Board, as is shown in these minute books that is followed where the budgets are approved, appointments of counsel—practically everything that the bank does is subject to the approval of the Board.

The Board can remove officers of the bank for cause.

The Court: The Board can?

Mr. Fitting: The Board can.

The Court: Or the board of directors?

Mr. Fitting: No, the Home Loan Bank Board. When I say the "Board" I mean the Home Loan Bank Board. The Home Loan Bank Board appoints the chairman and vice chairman of the directors. The bank counsel, as pointed out here, must be approved by the Board. The stock of the bank is transferable only to a limited extent, and it is not true stock.

In that connection, I would like to refer your Honor to Judge Roche's decision in *Peoples Bank v. Federal Reserve Bank of San Francisco*, 58 Fed. Supp. 25, page 30, where a similar question was raised as to stock in the Federal Reserve Bank. The judge there pointed out that it was not true stock in the common sense of the word, but it was more or less of an added security, so that these persons are not stockholders in the true sense of the word, they are persons that are given a limited participation in a bank which is [779] primarily a Government agency and runs——

The Court: They are members?

Mr. Fitting: They are members.

The Court: And they have a right to vote as a member, and each member's vote is equal regardless of the amount of stock he owns, regardless of the amount of money he owes, and regardless of the

amount of money which he may have on deposit with them for safekeeping.

Mr. Fitting: Correct. And he has a vote for four of the directors.

The Court: Eight.

Mr. Fitting: No—well, the members as a group elect eight directors.

The Court: I am speaking now about the members.

Mr. Fitting: I am talking now about an individual member.

The Court: He has a vote on eight directors.

Mr. Fitting: No, he has a vote on four members. There are four classes of directors elected by the institutions. There is one class of directors at large as to which each member votes, so each member votes for those two directors. Then the other six directors are divided into three classes, large, medium and small I think they are called, and the associations vote for the directors in their class, so if you are a large association you vote for two large directors and [780] two directors at large. So while eight of the directors are elected by the members as a whole, each individual member votes only for four of them.

The Court: I see your point.

Mr. Fitting: Now it is our contention for that reason we have this primary situation: You have, in effect, the Bank, an arm of the Government and controlled primarily by the Government, to carry out the financial policy of the Government.

The dispute here, to the extent that it is a dispute



between the Los Angeles Bank and the San Francisco Bank and the Home Loan Bank Board is, in effect, a dispute between groups that are primarily Government groups, a dispute which ordinarily is resolved solely in the executive department of the United States.

Ordinarily, where a dispute arises between two portions of the executive department the person that settles them, if they go high enough, is the President. He is the boss. And the executive department does not sue itself. It is our contention that that is primarily the situation that we have here.

I might also point out one inconsistency here as far as counsel is concerned. If they are correct in their contention that the Los Angeles Bank still exists, or has any existence, and that they represent the Los Angeles Bank, there [781] is a regulation, 122.70, which prevents any attorney from representing both the bank and any association without the consent of the Board.

The Court: There is a regulation which prevents the bank from having any attorney to represent them without the consent of the Board, did you not just tell me?

Mr. Fitting: That is correct.

The Court: And by that token no fees could be allowed. That is to say, counsel here for the plaintiff, Los Angeles Bank, have no legal standing at all under that theory.

Mr. Fitting: That is right. That is correct.

Now one further point, to the extent that this is



a class action, it is not entirely clear just who is the class. At one time the suit, you will recall, was as shown by the petition, since withdrawn from this case, the expenses were on behalf of a committee of the shareholders. Then that committee became a committee of a trade organization, namely, the California Savings & Loan League, so that it appeared to a certain extent this litigation is a litigation urged and brought on by a trade association rather than by a group of shareholders.

The Court: I cannot follow you on that in connection with the application for fees. The thought occurred to me, in connection with the application for expenses, because it appeared as though the California Savings & Loan League had [782] paid out expenses, but there is nothing to prevent somebody who is legitimately representing others in a class action from receiving funds from persons who might not be interested other than the immediate members of the class in their class status.

In other words, the Russell Sage Foundation might have contributed money to the expenses, although I can hardly believe anyone would be receiving interest at the rate they do on small loans that would do that, but it could be done.

My point is that that would not destroy the nature of the class action. I think it would prevent any members of the class from trying to get expenses back.

Mr. Fitting: Now one thing in that connection, if your Honor should feel that he has the right and the power to fix fees here, your Honor should bear

in mind the fact, as shown by the affidavits filed, a portion of the time here involved was spent for that committee. The exact figures appear in the affidavits just filed yesterday.

The Court: Spent in the Savings & Loan League committee?

Mr. Fitting: I don't know that the affidavits clearly state whether it was that committee or the shareholders committee, but both Mr. Fussell's affidavit and Mr. FitzPatrick's affidavit, show the portion of their time that was spent on that committee as distinguished from the time spent [783] on this litigation.

Finally, as far as Mr. Gilbert is concerned, it appears that there are these two substantial objections, first, that if there is any fund in court it was in court by the time that he got into the litigation; secondly, the class there represented in his client was being adequately represented by O'Melveny & Myers and Mr. FitzPatrick prior to the time that he came into the litigation. The litigation was far enough along so that he would know the character and nature of it, and there again if any fee is awarded it would appear that it should be all awarded to the bank or to the association, and if they felt that it should be divided among all the counsel here that would be their determination. But certainly it does not appear on those facts that he should be entitled to a separate and distinct award for his services, which are largely a duplication of services rendered by the other lawyers.

The Court: Thank you, Mr. Fitting.

ARGUMENT IN BEHALF OF THE  
SAN FRANCISCO BANK

Mr. Dusenbery: May it please the court, I am appearing on behalf of the San Francisco Bank, and my co-counsel, Mr. Bishop and Mr. Angell, may wish to respond to certain points that were made here, and I would ask that they might be permitted to do so at the close of my remarks.

While we have raised in our opposition to these petitions [784] certain jurisdictional objections, and by no means are waiving them now, I wish to direct what I have to say to what I consider a more fundamental aspect of this case.

As I have listened to Mr. Works' argument and read his memorandum, I gathered the difference of position between the petitioners and the San Francisco Bank arise in these fields: We differ as to the nature of their consolidated action, with which we are concerned, and we differ also as to the application of the trustee fund doctrine laid down in the Greenough case, the Ticonic case, and others, and to the application of the doctrine of *Barnes v. Newcomb*, relating to the right to file a claim in a receivership proceedings based upon the resistance to the appointment of a receiver.

Now these actions, as I construe them, if the court please, are actions in personam. I think that they are predicated upon a different theory, but they are either actions in personam, if the court please, or they are actions only quasi in rem.

In the complaint in Case No. 5678 the point is

made that the action arises under the former Judicial Code Section 118 for the removal of liens or clouds, in other words, quieting title.

The Court: And in 5421.

Mr. Dusenbery: Yes.

The Court: I do not know that that is done in 5678, is [785] it, Mr. Works?

Mr. Works: Oh, yes, your Honor.

The Court: In both cases?

Mr. Works: That is spelled out directly.

The Court: I recall examining that with relation to 5421, but I had not recalled it as to 5678.

Mr. Dusenbery: And also the doctrine of interpleader has been made in the matter, and I would like to give some consideration to both of those.

Now the conditions of the case are important, I think, the fact that neither of these cases have been tried, they are simply pending here on answers, we have reached that stage of the proceedings and that is an important factor to be considered as to the allowance of these petitions for attorney fees at this time. In other words, the court is asked to allow fees during the pendency of the action.

Now the motions that have been presented ask the court to allow reasonable attorney fees on account of legal services rendered in the action and to order the fees to be paid out of funds or property deposited in the registry of the court or as the court shall otherwise direct.

There are various funds on deposit in the court.

The Court: Counsel has indicated that they desire to have an order directing the fees to be paid,



if allowed, out of the funds in the possession of the San Francisco Bank. [786]

Mr. Dusenbery: I assume counsel means the cash and the Government bonds which were lodged in the registry of this court pursuant to the impound order which constitute collateral security for the notes of Long Beach Association.

The Court: I do not so understand counsel. I understood counsel, and Mr. Gilbert's argument, specifically with relation to the moneys on deposit with the Los Angeles Bank merely for safekeeping, demand deposit and time deposit, were transferred to the San Francisco Bank and that not only for that reason but for the reason of the transfer of all of the assets under Mr. Works' theory and argument this court has the power and they desire that an order shall not be made directing the payment of fees out of funds other than that which are on deposit in this court.

Mr. Works: We have asked for it either way in your Honor's discretion. We say your Honor has the power to make a direct order, an order directing the San Francisco Bank to pay, or out of the registry.

The Court: I am particularly concerned with that phase of it. If fees are allowed, whether or not I can order them paid out of funds other than that on deposit in this court, because of the asserted claims of ownership and disputed claims of ownership concerning the funds on deposit in this court. I would like to avoid further complication in connection with those funds on deposit, if I can. [787]



Mr. Works: We feel that your Honor has the power to do it either way. That is our position.

The Court: Does that clarify it in your mind?

Mr. Dusenbery: I think it does from our standpoint because I think it would be equivalent to asking the court to award a personal judgment for attorney fees against the San Francisco Bank, and that being so I think we know then the fund and the situation with which we are dealing in the argument.

Now the points raised with reference to the trustee fund and interpleader doctrine—this is a quasi in rem proceeding, or some sort of a proceeding whereby the court under those doctrines, or either of them, can allow attorney fees in this case—it seems to me it constitutes a stretching of those doctrines beyond any point at which they have ever been carried before in any of the cases that I have been able to find, and I assume that since eminent counsel who made the petitions were not able to find any cases carrying it to a case like this, that they have not been able to find such a case. It seems to me it might be well before we get into the application of those two doctrines to this situation, that we bear in mind a few of the principal fundamental principles with reference to the power of the court to allow costs and attorney fees.

Now we start out with the common law doctrine that no [788] costs or attorney fees were allowed. Then statutes were passed in England by which the costs of certain character were allowed the prevailing parties. Those statutes were carried over into

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the Committee and under the corresponding question on the Federal notes in the early history of it they were allowed access to the circulating parties.

In 1855 the first law statute was passed, a statute allowing or providing for the recovery of notes. That statute has been carried down through and down to the New Judicial Code where it is provided in Chapter 221, I believe it is, and it provides the notes to the circulating party.

The Court: In *Truett v. Greenough* it held it only applied to notes and not circulating bills.

Mr. Greenough: That is right. However, there is a question here that is allowed the circulating party which might be called an interest fee, but I think it might be considered as fee in this situation is collected.

Now the question came up early in the Federal cases as to whether or not parties could recover interest fees and the matter was considered and came up a few times in which the court held definitely that interest fees in an ordinary action between plaintiff and defendant cannot be recovered by the party against the other. A good statement of it is in *Ex parte Brown*, 12 U. S. 171, in 1804, and the reason for refusing it was set out there. They refused out— [1804]

The Court: I do not think that that is settled in fact, particularly in view of the case of cases which deal with equity cases.

Mr. Greenough: The early case, that a party bringing the enforcement of the law was not only receiving fees which he recovered as he is recovered



action when they were provided for by agreement of the parties, as in the case of a promissory note or contract, or when they were provided for by statute. I believe that is the condition of the law that exists at this time. I am leaving out of consideration those certain equity proceedings in rem in which in the administration of the assets of a corporation under bankruptcy, under equity receivership, in condemnation or other proceedings in rem, the court is disposing of the case and before it has the power to authorize the payment of fees as a part of the expenses of the administration in carrying out its functions in that proceeding in rem.

Now as I got counsel's position here with respect to their right to recover, some emphasis has been placed upon the fact that this is a class action, that certain associations are suing on behalf of the Los Angeles Bank. I can't find so far as the allowance of attorney fees is concerned, any distinction between class actions and actions in which the plaintiff, the real party in interest, can come in on his own behalf so far as the right to recover attorney fees from the [190] defendant is concerned.

The Court: From the common fund, though.

Mr. Tinsenberg: I will come to that in a moment.

The Court: They are not saying that they want attorney fees from the defendant; they say they want attorney fees from their own money which the defendant has got and money to which they lay claim and title and this court has jurisdiction in personam over the defendant to compel him to disburse what belongs to them.



Is that your theory?

Mr. Works: That's it exactly, your Honor.

Mr. Dusenbery: That is the doctrine in rem, I think, but it has to be otherwise I don't believe that the court would have any power to compel a defendant to pay to the plaintiff his attorney fees.

The Court: I do not think that this court would have the power to enter a personal judgment if it were purely a case in personam directing a defendant to pay the plaintiff's counsel.

Mr. Dusenbery: I think that is pretty well settled, your Honor.

The Court: If it were not for the situation as it is here, which is both an action in rem and in personam, as to Case 5421; in Case 5678 they do not ask any judgment for damages, personal damages, against the defendant; whereas in [791] Case 5421 they do, so that it is both in rem and in personam.

Mr. Dusenbery: They ask for the recovery of the assets.

The Court: They ask for the recovery of the assets in both cases, and in 5421, in addition, they ask for a personal judgment for damages against the defendant.

Mr. Dusenbery: Now I would like to just refer briefly to that aspect of the case. On our theory it is purely an action in personam.

The Court: Which one?

Mr. Dusenbery: 5678—both of them, for that matter—involving a judicial review of certain administrative orders. That is our theory of these cases, if the court please, that they are in personam.

Let us pass that for the purposes of this argument and consider——

The Court: Even if it were a judicial review of administrative orders, could it still not be an action brought under old Section 118 of former Title 28, affecting or concerning the title or disputed title to or claim to property within the district?

Mr. Dusenbery: Our position is that it has to be strictly an action in personam and that you have to have personal jurisdiction over essential parties. Of course we have raised that point many times and your Honor has considered it. [792]

Let us look at it from their standpoint. They say they are seeking to quiet title to the assets of the former Los Angeles Bank. Now that is a proceeding not in rem but quasi in rem. You have a whole group of cases there, foreclosures of liens and mortgages, suits to quiet title, cases of that kind in which there is property within the jurisdiction of the court. The controversy regarding that is between the litigants before the court, and it is a sort of an in rem proceeding to the extent that you can bind the property by getting substituted service on parties interested in it by serving them outside the jurisdiction. But those proceedings, if the court please, that are quasi in rem, none of those proceedings has it ever been held that I can find where the defendant in those cases, because property was involved, has been required at any stage of the proceedings to pay attorney fees to the plaintiff. You sue to recover possession of property that has been tortiously taken from you and you can't go into

court in that proceeding and ask the defendant to pay you attorney fees and costs and permit you to prosecute the case to recover the property which you allege is due you, even at the end of the litigation you still can't be allowed those attorney fees.

The Court: You mean to say that somebody can come in and take your property, your house and all your property and your bank account, under some claim or color of right, and [793] that you would be compelled to finance your own lawsuit against him and could not finance it out of your own property in his possession?

Mr. Dusenbery: Your Honor, you can't determine whose the property is until the end of the lawsuit. You would have the case in order to allow attorney fees before the case is ended.

The Court: But it is the claim of right. Let us take your statement just now. If I sustained your position I have prejudged the lawsuit and decided the case in favor of the San Francisco Bank.

Mr. Dusenbery: Not at all, your Honor.

The Court: I do not see how it can be escaped. I was trying to follow that through my mind during Mr. Works' argument as to whether or not it was good faith or reasonable grounds. Your position is that they have no reasonable grounds because they have no grounds. That was the statement which you just made and which Mr. Fitting just made. So if I sustain your objection it would decide the merits of the case.

Mr. Dusenbery: I know of no theory upon which a plaintiff in an action in personam or quasi in rem,

in suing to recover for property or for conversion of property, or to quiet title for property, whether it is all the property he has or not, whether he has anything else to start the action with or not, can compel a defendant to pay attorney fees to [794] him. I can't find any such case, and if counsel have a case of that kind I would be very interested to see it. I don't think it exists, if the court please.

The Court: Does the San Francisco Bank claim that in so far as the members of the class are concerned who had money on deposit in the sums indicated by Mr. Gilbert, that it was not their money?

Mr. Dusenbery: Your Honor, whether the San Francisco Bank——

The Court: That is the illustration of the house, the seizure of the house and money. Is that the claim of the San Francisco Bank, that it was not the money belonging to the members of the class?

Mr. Dusenbery: Whether the San Francisco Bank has any property belonging to the Los Angeles Bank depends upon the validity of three executive orders.

The Court: That is not my question. My question is whether or not it is the position of the San Francisco Bank that the money on time deposit by the members of the class represented by Mr. Works and by Mr. Gilbert was not the property of those members on the date of the seizure.

Mr. Dusenbery: Your Honor is referring to the securities and the cash?

The Court: That is correct.

Mr. Dusenbery: Not at all, your Honor. That



property, [795] that money, has been theirs and they have used it.

The Court: Who has it now?

Mr. Angell: They have most of it.

Mr. Dusenbery: They have withdrawn it.

Mr. Angell: It has been changed so many times.

Mr. Dusenbery: They have put in other cash in the San Francisco Bank, they have changed that collateral, they have withdrawn it and borrowed on it.

The Court: That was not the collateral that I am talking about.

Mr. Bishop: Your Honor, there is no evidence in this record in four years that we have ever denied anybody access to their time deposits or prevented a withdrawal, and if there had been you would have heard about it.

The Court: Precisely that is the position of the defendants now. You are denying them access to it in order to pay attorney fees for them to represent themselves in their claimed rights. That is the net effect of your position.

Mr. Angell: May I answer that question?

The Court: I cannot see it any other way.

Mr. Angell: Then you don't wish me to make any statement with regard to it? I think the matter is very simple. The time deposits were time deposits belonging to the association, that is, the individual associations.

The Court: The members of the class. [796]

Mr. Angell: They were not the funds of the Los Angeles Bank except as a depositor.



The Court: I understand that. That did not comprehend my question at all.

Mr. Angell: That these individual depositors, these individual associations, at any time they chose from the time this litigation began up until the present time, because they could walk in and take out their time deposits from the San Francisco Bank, and there is no proof in here at all that any of them have ever made a request for those time deposits or that any of them who have made requests have ever been denied it. The truth of the matter is that probably all of those have been taken out and new deposits been made and borrowings made against those time deposits, and I believe there is an exhibit attached to Mr. Bogardus' affidavit that shows the gyrations of those funds.

The Court: That is the gyrations of the collateral, as I read the affidavit.

Mr. Angell: But that also has the time deposits in there in one of those columns. Now there is no showing here that any one of these plaintiffs in this class action, or any other association, has ever requested a dime from the San Francisco Bank who has not been paid.

The Court: Shall we let Mr. Dusenbery finish his argument? How much longer are you going to be? [797]

Mr. Dusenbery: Not very long. I just have a few points that I want to make, your Honor.

I want to say one thing about in rem proceedings. In my opinion this is not an in rem proceeding.

The Court: What is the date of Mr. Bogardus' affidavit, the one that was not stricken?

Mr. Bishop: The date of it is February 25.

The Court: 1950 or 1949?

Mr. Bishop: 1950.

The Court: 1950?

Mr. Bishop: Yes.

The Court: I thought that was the second affidavit which was stricken.

Mr. Bishop: No, not to my understanding.

Mr. Angell: Not to my understanding, your Honor.

The Court: I do not remember. He had two affidavits. The affidavit filed March 17, 1949, was stricken. This was filed when?

Mr. Chapman: It was served February 22d.

Mr. Bishop: It would be filed about the 27th or 28th. If your Honor will give me the file I can find it. It has a black photostat sticking out at the bottom.

The Court: Very well. All right, Mr. Dusenbery.

Mr. Dusenbery: In my opinion, this is not, as I said, either the Long Beach case or the Los Angeles case, a true [798] proceeding in rem. Both of those corporations, if the court please, are going concerns and have been throughout these proceedings. They are both solvent, both under their own management, their assets have not been taken over for liquidation by any court, and they are just ordinary corporations.

The Court: Excuse me. In answer to your sug-

gestion that it is only the stock ownership, it is not the gyrations of the fund.

Mr. Angell: I was going to say that I think this is not the exhibit that shows that.

Mr. Bishop: It is in Mr. Noon's affidavit.

Mr. Angell: Let me look at the record.

Mr. Dusenberry: I just want to make the point that in my opinion neither the Long Beach Association nor the Los Angeles Bank are under the control of any court. Their assets are not being liquidated, they are not under receivership, they are not in bankruptcy, and there is no basis on which any court could acquire or have in rem jurisdiction over the administrations of their assets. Those assets are being managed and handled by their own management, and for that reason I think the doctrine of in rem that counsel has raised here is not applicable.

Now as to the application of receiver in interpleader proceedings of the right to recover attorney fees, the only attorney fees that I can find that are allowed in interpleader [799] proceedings are attorney fees to the plaintiff in interpleader in a pure interpleader proceedings where the plaintiff is acting——

The Court: What has that to do with this matter here? The complaint was originally filed by the Los Angeles Bank on behalf of itself and its members as a class action against the San Francisco Bank, was it not?

Mr. Dusenberry: That is right.

The Court: The interpleader is involved in 5421 where the Long Beach Association interpleaded. I

do not think the San Francisco Bank interplead in 5421, did you?

Mr. Dusenbery: If counsel are not relying on interpleader, the doctrine of interpleader. I think the court's position is well taken.

Mr. Works: We made our position clear. If you will read the first paragraph of our complaint you will find what kind of a lawsuit we have got.

The Court: You did not file an interpleader in 5421?

Mr. Works: No, your Honor.

The Court: You were brought into 5421 in a cross-complaint in interpleader?

Mr. Chapman: No, they were first brought in on the first of July 1946, about a month after the action was filed, as defendants in a third-party complaint.

The Court: Then the original complaint was later amended [800] to include them?

Mr. Chapman: That is right.

Mr. Westover: Also served in 1947 on behalf of the Bank.

The Court: Very well.

Mr. Dusenbery: Very well. We are out of the interpleader field on both counts.

As I read counsel's argument here, they rely on two analogies for the power of the court to award these attorney fees. The first analogy which they draw on is the doctrine of *Barnes v. Newcomb*, that when a proceeding is brought against a corporation for the appointment of a receiver and the corporation goes ahead and employs counsel to resist the application for the appointment, it doesn't make



any difference whether the resistance comes before the appointment or whether it is a temporary appointment and they come in to set it aside. In other words, when the company is seeking to have its day in court in any form to resist the appointment of the receiver they are unsuccessful, the receiver is appointed, the court through its receiver takes in rem jurisdiction over the assets of the corporation and proceeds to litigate. The attorneys who act for the corporation in affording for them their day in court as to whether they were insolvent, whether the conditions alleged were applied and whether the receiver was appointed, may come in and present [801] a claim against that fund for reasonable compensation on the showing that the defense was made in good faith and for reasonable and probable cause.

Now I submit to the court that there is no analogy between that situation and the one that is suggested here. There the proceeding has been terminated and all the assets of the corporation for whom they worked have gone into liquidation through an equity receivership and are in the custody of the court. The only chance to recover their fees of course is to present a claim against those assets, and that is what they do in all of these cases.

In none of those cases, if the court please—I have read all of them that are cited and several others—have I been able to find one case where prior to the determination and the appointment of a receivership and its going under the jurisdiction of the



court, has the plaintiff, the defendant, ever been awarded any attorney fees between them while the litigation is going on. There is the distinction, it seems to me, between those cases.

Here in this sort of a situation, if the court please, you don't have any liquidation, the San Francisco Bank is still in existence and it is still amenable to any sort of recovery that may legally be made against it, so you don't have the necessity that confronts the courts in a situation of that kind where an honest defense has been made and unless [802] they get paid through the funds of the corporation for whom they worked they won't get paid at all. That isn't the situation here.

Now we are not contending, if the court please, that counsel who have rendered these services may not at the proper time from the proper parties be entitled to compensation for their services. If they bring themselves within the trustee fund doctrine that counsel has referred to, and the litigation which has been started is successful, the assets of the Los Angeles Bank which they allege have been wrongfully taken from that institution are restored to it, under the trust fund doctrine, the Greenough case and all the others, under the doctrine of equitable contribution they would have the right to reimbursement out of the fund protected or reserved. And that would be the basis of their right so far as attorney fees are concerned, it seems to me.

Now that is the principle which has long been established. It has been used extensively and there is nothing in any of the authorities that indicates

up to now it hasn't been adequate to protect the rights of minority stockholders or other members of the trust who feel that the trust fund is being invaded.

Counsel made another argument by analogy but he didn't refer to it in the oral argument, and that is the marital status argument. I don't know whether that is still being [803] relied upon or not. But I submit to the court that the mere fact that under the laws of domestic relations which involve the status of husband and wife, the relationship is peculiar to that particular field of law, and a court in the early stages of a divorce case brought by a wife may require a husband to pay temporary alimony and attorney fees, but that would not afford any basis for these corporations to recover from the defendant in this case in advance of the termination of the case, if the court please.

The Court: Those allowances are not made under any specific statutory authority, are they?

Mr. Dusenbery: You mean in the domestic relations case?

The Court: Yes.

Mr. Dusenbery: Yes.

The Court: That says domestic relations shall be treated differently in the allowance of attorney fees?

Mr. Dusenbery: I think they have been allowed in some states.

The Court: I know they have been allowed, but it is done on the theory of the common fund, is it not?

Mr. Dusenbery: I think not, your Honor. I think it is on the basis of status. I think it goes back to ecclesiastical law and common law, the concept of the status, the duty of the husband to support the wife, and a lot of other concepts that are peculiar only to that relationship. [804]

The Court: Of course down here we do it a little differently, you know, we make the wife pay sometimes.

Mr. Dusenbery: Yes, that is done by statute, and properly so, I assume. But I submit to the court on any basis that that argument just isn't analogous or applicable to this situation. Certainly it can't be said that the Los Angeles Bank is the wife of the San Francisco Bank so as to put them eligible for alimony or suit money or attorney fees money.

Mr. Gilbert: Mr. Works has observed that it was a "shot-gun" marriage.

Mr. Dusenbery: If you read counsel's complaints here you would assume that that was about the relationship, a shotgun pleading.

The Court: From the size of the pleadings I would like to say that if it were a wedding it was a wedding of the winds.

Mr. Dusenbery: Anyhow, your Honor, we feel thoroughly convinced that the court is not authorized to award any attorney fees or suit money or anything equivalent to it by one of these banks to the other.

We believe, if the court please, we have been able to find no legal basis upon which at this stage of the

proceedings these attorney fees may be allowed. As I said before, we are not contending that counsel are not worthy of their hire at the proper time and under the proper circumstances, [805] that they may not be entitled to compensation, but we are simply saying that at this time in this case at this stage of the proceedings they can't compel the San Francisco Bank to pay those attorney fees to them.

The Court: I see it is 12:25.

Mr. Angell: If your Honor please, the exhibit to which I referred——

The Court: If you will give the date then we can find it here and you will not get your file confused.

Mr. Angell: It is the exhibit attached to the affidavit of Mr. Noon.

The Court: Filed when?

Mr. Chapman: There are several.

Mr. Angell: And which I do not believe was stricken. It is an affidavit apparently filed on the 24th day of February, 1950. This is only a copy I have here. It sets forth the deposits and withdrawals by each of the six plaintiff associations.

Mr. Bishop: It would either be right before or right after that other affidavit of Mr. Bogardus, your Honor.

The Court: We will find it after recess. What time do you want to start again? 2:00 o'clock? It is 12:25 now. (Assent.)

Up to now, how long do you think you will want in rebuttal? [806]

Mr. Works: If I have any at all, it will be less than five minutes, your Honor.

The Court: And you will want to be heard, Mr. Westover?

Mr. Westover: I would like to have about five minutes to state the position of the Long Beach Federal.

Mr. Chapman: I could finish in about 15 minutes.

The Court: I think we had better proceed at 2:00 o'clock then. Recess until 2:00 o'clock.

(Whereupon, at 12:25 o'clock p.m., a recess was taken until 2:00 o'clock p.m. of the same date.) [807]

April 8, 1950—2:00 P.M.

The Court: Mr. Bishop has drawn my attention to the answer in opposition to the Federal Home Loan Bank of San Francisco, the motion and order of First Federal Savings & Loan Association of Wilmington, and the answer was filed February 27, 1950. The affidavit of Mr. Noon is attached with a schedule No. 1.

Mr. Bishop: There are seven schedules, your Honor. Those are the actual plaintiff associations.

The Court: I do not understand them. Take Schedule 3, Los Angeles Federal Savings & Loan Association, for instance, under date of June 30, 1948, they had 1250 shares of stock, they had zero bonds on deposit, they owed \$4,700,000 principal balance in mortgages and had secured an advance of \$237,000, or a total indebtedness of \$5,000,000, against which the San Francisco Bank had only on deposit \$150,000.



Mr. Bishop: What date are you referring to on Schedule 3?

The Court: June 30, 1948.

Mr. Bishop: No, there was \$4,782,496 unpaid principal balance and mortgages on hand.

Mr. Works: Are you talking about the Los Angeles Federal?

The Court: The Los Angeles Federal. I thought that was [808] unpaid principal of balances of mortgages that were owed to the San Francisco Bank.

Mr. Bishop: No, sir. That is their collateral on deposit.

The Court: That is their collateral?

Mr. Bishop: Yes.

The Court: And the advances were what?

Mr. Bishop: \$237,000.

The Court: Who owes that to whom?

Mr. Bishop: The Los Angeles Federal Savings & Loan Association——

The Court: Owes it to the San Francisco Bank?

Mr. Bishop: That is right.

The Court: And they had on deposit \$150,000 in cash?

Mr. Bishop: That is right.

The Court: So that as against \$4,000,000 in collateral there was an indebtedness—\$4,782,000, plus \$150,000; that is practically \$5,000,000—as against an indebtedness of \$237,000 they had \$5,000,000 on deposit as collateral.

Mr. Bishop: That is correct.

Mr. Works: Did I understand you to say that they were one of the plaintiffs, because they are not. The Los Angeles American is one of the plaintiffs.

Mr. Bishop: You represent them all. There is no denial that the Coast Federal Savings & Loan Association is one of [809] the plaintiff associations that you represent?

Mr. Works: It may not make any difference, but I merely wanted to correct your statement. They are not a named plaintiff, that is all.

Mr. Angell: It is probably an error in getting them up.

The Court: This column "Bonds," that is bonds owned by the Association?

Mr. Bishop: That is correct. They leave them with our bank frequently for safekeeping only, your Honor, so if they want a quick advance they can get it, or it is merely just there for safekeeping.

The Court: The purpose of these is what, to illustrate or to show that the San Francisco Bank does not have on deposit, and has not had on deposit, any money of the members of the class?

Mr. Bishop: Your Honor, that isn't the purpose. Let me explain—and that is just what I intended to do, and give a full answer and explanation of this—there is a great deal of talk here about your powers sitting as a judge. First of all, before you can exercise, leaving out all jurisdictional problems, any equitable jurisdiction you must have something in this record that shows that a great and irreparable loss has been suffered or will be suf-

ferred that can only be prevented by equitable jurisdiction.

The Court: No, that great and irreparable loss will be [810] suffered authorizes the court to issue an immediate restraining order, and I have none here.

Mr. Bishop: Well, I will go on. Let us ask this question then: What loss has any association suffered by virtue of a merger of the old Los Angeles Bank and Portland Bank in view of the provisions of Section 26 of the Act under which they were incorporated?

The Court: I cannot come to a conclusion on that because that would be deciding the lawsuit. The only thing that I can conclude on it is whether or not there is some reasonable right to their contention, or reasonable grounds to their contention.

Now let us see. What is that code section you just cited?

Mr. Bishop: Section 26.

The Court: What is the code section?

Mr. Bishop: I haven't got it here in front of me.

Mr. FitzPatrick: 1428 or 1429, your Honor.

The Court: Of what title?

Mr. FitzPatrick: Title 12.

Mr. Bishop: The particular reason I am calling the court's attention to that section at this time is because of the discussion about *Mallonee v. Fahey* this morning.

The Court: That is section what of the Act?

Mr. Bishop: Section 26. [811]

Mr. Fitting: Section 26 is 1446.

The Court: Let us just read that into the record here now:

“Whenever the Board finds that the efficient and economical accomplishment of the purposes of this Chapter will be aided by such action, and in accordance with such rules, regulations and orders as the Board may prescribe, any Federal home loan bank may be liquidated or reorganized and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization any other Federal Home Loan Bank may, with the approval of the Board, acquire the assets of any such liquidated or reorganized bank and assume liabilities therefor in whole or in part.”

Now the question arises as to whether or not there is reasonable ground under that section for the contentions of the plaintiffs, and if they are proceeding in good faith. From the face of the orders it does not appear that they were made pursuant to any general rules or regulations of the Board.

I do not know how those orders provide for its stock to be paid off—I suppose in reading them through there must [812] be some provision in them—but it cannot be said on the face of it that there was payment of its liabilities or making provision for the payment of its liabilities. They transferred all of the assets to the Federal Home Loan Bank of Portland.



The next sentence says, "Such a home loan bank may acquire and assume liabilities with the approval of the Board," and yet the allegations in the complaint are to the effect that that was not done, and it appears from the minutes here that any approval that was given by the Portland Bank occurred not before April 8, whatever year it was, whereas the instantaneous liquidation, consolidation and creation occurred on March 29, and there is no showing in the record that at any time has the Home Loan Bank of Portland assumed the liabilities of the Los Angeles Bank.

Mr. Bishop: I contend to the contrary. The absolute opposite appears in this record. There is not one person that can deny or assert that fact. Every one of them has received any amount of money they had on deposit when they wanted it. They have been able to make their loans. They didn't lose anything.

The Court: Perhaps I did not make myself clear.

In the record before me now in this case and from the allegations in the complaint, there is reasonable grounds to believe that the plaintiffs have a good cause of action in [813] that it does not appear from the evidence in this case to date that there was any assumption of liability by the Home Loan Bank of Portland, or any acceptance of the assets with the approval of the Board. In other words, the Board did it and the Federal Home Loan Bank of Portland after that approved it. It is just the reverse.

Moreover, the allegations of the complaint allege



that it was done unlawfully. So it is not a question, I again must emphasize that the court is not called upon at this time to determine the merits of the case, and anything that I have said or am saying is not to be indicative of the merits, but solely goes to the question as to whether or not there was good faith and reasonable grounds for bringing this lawsuit.

Mr. Bishop: Your Honor, that is a very splendid argument from the point that you are directing it to possibly, but that is not the argument I am making.

The Court: I am not making any argument, Mr. Bishop.

Mr. Bishop: I would like to go on with the point I am trying to make, and that is if I contract to deposit money in the Pacific Southwest Bank and I buy stock in that bank and I get up tomorrow morning and find that that bank's head office was moved to an office that used to be the Security Bank at the corner of Fifth and Spring, with new officers and new directors that I didn't elect, and I had no choice in the officers, and the furniture is moved—— [814]

The Court: And the employees all fired.

Mr. Bishop: No, not all the employees.

The Court: Not all of them?

Mr. Bishop: No. Some of them were. But I don't think that makes any difference.

When I contract against the majority stockholding in this instance, the United States of America, and accept the right to the credit of the United

States, accept the right to Federal insurance, accept the right to do business under a name that legitimately ties to a business in this state that has grown into disrepute that I was willing to do——

The Court: Suppose that you put that money in that bank that you just mentioned and the next morning you woke up and found that the Security-First National Bank had walked into the bank and said, “You are dissolved, you are liquidated, your assets are transferred to me and this bank is closed”?

Mr. Bishop: Yes, sir. And if my by-laws and charter and the act under which it was created said so, I would be regarded as stupid if I tried to complain. We are getting now to the whole meat of this case.

Congress made a mistake in the early days of the history of this country and they weren't going to make it again. There has been continuous complaint about the currency and issuance of money in this country. This time they kept control [815] of the banking system so that that claim could not be uttered again. That is what *Mallonnee v. Fahey* means.

The Court: The complainants are not complaining about control by Congress, they just said that the defendant bank did not pay any attention to the law. That is the long and short of their complaint.

Mr. Bishop: Your Honor, I want to go back to the schedules and the question showing that there

was no loss suffered by any of these parties here.

The Court: It is not a question of loss.

Mr. Bishop: Or possible loss or anything that they can complain about. They can get their money. It has been demonstrated that they can get it.

The Court: I passed on that in denying the motion to dismiss.

Mr. Bishop: Well, Mr. Noon's affidavit is not stricken. He was here. That was the ground upon which those affidavits were stricken, and I think I have the right and opportunity to point out, like in the instance of the Coast Federal, they had \$10,000,000 in bonds and \$3,700,000 in advances on the date of the merger. On June 30 they had no bonds, they had no loans, they had no collateral, they had nothing with us. What did they lose? Nothing. What right have they to assert? None. What other right have they? They have a right to borrow from our bank. All right. [816]

On June 30, 1948, they come back and they deposit \$3,000,000 collateral and they borrow \$2,000,000. And that fact is shown through Schedules 1, 2, 3, 4, 5, 6 and 7, leaving out the one association, for all of the plaintiff associations before this court.

We haven't been arguing about estoppel, we have been arguing about estoppel by contract, by charter, and that is one of the points that will ultimately decide this case. And in that connection, I am very happy to see opposing counsel finally have to hang their hat on divorce cases or a case like the Eggert case, a case that has no more resemblance to this case than if it had never been decided.

The issues there were at a point of final decision. There was an appeal pending. There wasn't a question of the serious outcome from the standpoint of substance or from the standpoint of jurisdiction or from the standpoint of venue. Nor was there a question of the presumption of the regularity of official acts. No matter what this court wants to decide this morning, it indicates it is going on the major premise that just because it was instantaneous that Mr. Fahey committed an unlawful and unwarranted act.

The Court: No, I am not.

Mr. Bishop: That is what their complaint is based on, your Honor.

The Court: My questions were directed to counsel this [817] morning with relation to whether or not there was an analogy between an instantaneous dissolution or liquidation and one which might occur over a period of time, such as those which are involved in the cases here. What difference does it make?

Mr. Bishop: Your Honor, I claim that when I make an agreement by my charter—and that has been the decision of the United States Supreme Court for too many years to mention, it is so elementary—that that is the contract that is accepted, and remember they are contracting and they ask for the——

The Court: It is not so many years that one cannot remember. It seems to me as though I remember until recent years the Supreme Court always said that every portion of the Constitution



was as much a part of every law of the United States as if it had been written in there. Now this doctrine seems to say that a person, when he makes a contract or gets a charter under a law—and I say it frankly and candidly and I would say it to the Justices myself—they assume that they thereby waive their constitutional rights which they previously held they had a right to assume was written into the law.

Mr. Bishop: Your Honor, this isn't a private corporation, this is a corporation of one to go into business with the Federal Government. Due process of law wasn't designed [818] to protect the Federal Government, it was designed to protect the private citizen.

The Court: From the Government.

Mr. Bishop: Yes, but these people, the Bank, not the associations, went into business with Uncle Sam and Uncle Sam had a majority control and put up the real money, the real financing. This situation, I am confident that no Supreme Court will hold that due process of law was designed to protect the Government from itself. That is what you will have to hold.

The Court: No.

Mr. Bishop: Yes, you will.

The Court: Due process of law was designed to protect the individual from the Government.

Mr. Bishop: Yes, but these people went in business with the Government and the Government had over a majority of the stock.



The Court: I know what *Mallonee v. Fahey* says, and I know the doctrine, and I cannot see how they could have reached the conclusion unless they came to the conclusion that by accepting a charter anybody waived their objections to the constitutional rights that they may have otherwise had written into the law.

Mr. Bishop: Reverting again to the position of this case as distinguished from cases like the *Eggert* case, you had a [819] common fund in court, you didn't have to make a finding nor did you have to hold——

The Court: No, there was no common fund in court in the *Eggert* case. It was not in court, it was in the hands of the state official.

Mr. Bishop: Yes, sir.

The Court: The liquidator.

Mr. Bishop: Yes, sir, as liquidator.

The Court: Or whatever you call him.

Mr. Bishop: And in that same case, there are cases where the Pacific States were denied attorney fees that weren't cited or called to the attention of the court. There were several cases of attorney fees in that case. I can get the citations.

Your Honor, I always have to point out that we have to go back to the essential pleadings here. The essential pleadings here are based on a charge of fraud. It is the one time in a civil action when the court must indulge in a presumption of innocence and not in wrongdoing. I am pointing out that with every ultimate, every remotely connected ultimate, issue remaining undecided in this

case, that no matter how well counsel deserves to be rewarded for their services, that time is not here. They have not established one principle yet upon which they can recover an interim allowance in any court of chancery that would award them, with all these [820] questions in front of it, a fee at this time. And we don't stop any one of these associations from going and getting millions of dollars out of our hands to fight us. They got along for four years, they can wait another four years, and there is no more showing of hardship than that.

I see no reason why a decision has to be rendered now with an appeal pending that may decide all the issues.

The Court: Of course, Mr. Bishop, there hangs always over this case by a very slender thread in any consideration of such an argument as you are making the fact that one of the grounds of seizure of the Long Beach Federal was an appropriation for the payment of attorney fees to oppose the Board.

Mr. Bishop: You are, of course, assuming that that is a fact.

The Court: I said the grounds that they assign.

Mr. Bishop: Sure, and the grounds for their whole action is fraud.

The Court: No, the grounds that the Board assigned when finally called upon to set forth the specification, or whatever they called it, one of them was that they had appropriated \$50,000 for attorney fees. So to follow your theory that they have no

hardship, that they can get their money from the San Francisco Bank and use it to pay attorney fees, of course the example is there.

Mr. Bishop: That is another point. I am glad you [821] brought that up.

The Court: What prudent businessman would go to work and do the same thing that was done in the Long Beach case when it has resulted in this kind of litigation?

Mr. Angell: We do not concede that.

The Court: You do not concede what?

Mr. Angell: That any prudent businessman operating a corporation which was a public agency would pass a resolution to extract \$100,000 out of the corporation's coffers and put them in the hands of an individual beyond the control of the corporation's directors and to extract \$50,000 in one check and put it into the hands of a third party to control so that if a conservator or anyone came in it would be beyond their control. That would not be the act of a prudent businessman, let alone when you apply it to a Government agency and which is enjoying tax freedom and everything from the Government to handle funds of that matter. It just can't be done, either by a prudent or an imprudent businessman.

The Court: The fact remains that on the face of the resolution it was for the purpose of attorney fees and the fact remains that that was one of the grounds assigned for seizure of Long Beach.

Mr. Angell: And a mighty good one.

The Court: All the more reason, if that were a good one, that the prudent businessman in charge of these associations [822] would be hesitant about withdrawing any funds to pay attorney fees.

Mr. Bishop: I believe, your Honor, a prudent businessman, if he was acting in good faith, would have done it in a far different way.

The Court: Of course. Everybody does everything differently. That keeps us from all being like the people in the cemetery.

Where is that black book, the corporate minutes?

Mr. Bishop: I would like to point out to your Honor, while waiting for this book, that there is another misconception in this case. The court apparently is going on the basis that the Supreme Court of the United States refused the stay on the \$50,000 fee awarded to Mr. Westover in connection with his services for the Long Beach Association and that that apparently affords some basis for decision now. That cannot be and is not the fact. There the funds were in this court. In addition, if they lost the case the loss would be theirs and it would not have been the defendants' loss. Here there isn't one similarity between that case and this.

The Supreme Court also pointed out that it didn't believe that a \$50,000 fee would jeopardize that institution, realizing the point we are making that if it hadn't been its funds it would have taken a different position and no interim allowance would have been made. That is not true here. [823]

The Court: But, counsel, at the time that case



was decided those funds were in the possession of Mr. Ammann as conservator, were they not?

Mr. Bishop: My understanding was that the funds were in the registry of this court.

The Court: The funds from which the allowance was made were in the registry of this court, but the assets of the association were in the hands of Mr. Ammann as conservator and he was claiming all of these.

Mr. Bishop: That is correct.

The Court: And the shareholders had no right to any one of them.

Mr. Bishop: Your Honor, his claim of those funds was on behalf of the association, not of himself individually. That was what the Supreme Court decided. There is no doubt about that. No one can quarrel with me or argue about that.

Mr. Angell: The Supreme Court merely decided that you can't use a special writ in place of an appeal in a case of that kind, and with that none of us can quarrel. That is all it did hold.

The Court: Very well. Let us let Mr. Bishop finish his argument. Excuse me for interrupting you, but I have another question that I want to ask you in just a moment as soon as I find the minutes here. I do not know that it is in LA-300. What I am looking for are the minutes of April 8, 1946, I [824] think.

Mr. Bishop: I think I know the minutes your Honor is referring to.

Mr. Westover: It is right there on your desk. It is page 37, I believe.



(The volume referred to was passed to the court.)

Mr. Chapman: Was that a stockholders' meeting or a directors' meeting?

The Court: No, this is not what I am looking for.

(The volume referred to was passed to the court.)

The Court: Yes, this is it.

Mr. Angell: What was the date of the minute?

The Court: April 8, 1946, special meeting of the board of directors of the Federal Home Loan Bank of San Francisco, which immediately follows on page 88, minutes of the meeting of the board of directors of what is entitled the Federal Home Loan Bank of Portland, March 11, 1946, beginning on page 81 and ending at the top of page 88.

Now here is my question, Mr. Bishop: Were there any rules or regulations on March 29, 1946, that had been promulgated by the Board concerning the liquidation or dissolution of Federal home loan banks that were in effect on that date?

Mr. Bishop: Your Honor, we didn't need any, first of all.

The Court: I did not ask you that question. [825]

Mr. Bishop: May I finish the answer, your Honor?

The Court: You have not started to answer.

Mr. Bishop: Yes, I have.

The Court: No, you have not. I asked you

whether or not there were any in force and effect. If you do not know, that is one thing.

Mr. Bishop: Your Honor, at that time there weren't but they weren't necessary. The rest of the sentence that I was going to say, I want to call your attention to Section 3 of the Act, that the districts thus created may be readjusted and new districts made from time to time and created by the Board not to exceed twelve in all.

The Court: I understand.

Mr. Bishop: This was merely a readjustment and a merging of two banks.

The Court: Of the district.

Mr. Bishop: Yes, and of the change in name.

The Court: Were the acts done under Section 3 or under Section 26?

Mr. Bishop: I am not going to assume to state what the Home Loan Bank Board's position is in that matter.

The Court: Very well.

Mr. Bishop: I know what can justify their position. I know what the Mallonee decision justifies. You are there admitting then that this court had no jurisdiction because [826] they haven't attempted to exhaust their remedies before that.

The Court: Mr. Bishop, I am not admitting anything.

Mr. Bishop: Your Honor, I was reminded of a story told last night by counsel of a court that was arguing the other fellow's case and I had to finally object because that court had argued my

case once before and I lost it. I kind of feel in that position myself today.

The Court: Well, I should say, Mr. Bishop, that if you feel that under the statutes I possess any ground of disqualification the remedies are open to any counsel here, and if there is the slightest suggestion of that I shall at this moment adjourn and you may take your remedy.

Mr. Bishop: I do not believe that my facetious remarks would be construed in that manner, but I do wish to say——

The Court: I am asking you now if it was intended at all to suggest any ground of disqualification on my part.

The Court: No, sir.

The Court: Very well.

Mr. Bishop: Now your Honor has raised the question about assumption of liability. I do particularly call your attention to Order No. 5082 of March 29, 1946, the first paragraph, where it is stated:

“That effective March 29, 1946, the Federal Home Loan Bank of Los Angeles shall be liquidated and reorganized and all assets and property of [827] any kind or nature of such bank, including any unexpended amounts in approved and outstanding budgets and personal, but excluding officers and directors, are hereby transferred to the Federal Home Loan Bank of Portland and all the liabilities and obligations of such Federal Home Loan Bank of Los Angeles are to be assumed by the Federal Home Loan Bank of Portland.”

And I challenge anybody to point to the record where we have failed or denied any such obligations. The contrary appears of record.

The Court: The minute books have been here, counsel have all had an opportunity to examine them, no resolution of authority of assumption of such liabilities has been called to the court's attention and, moreover, this is an order promulgated by the Board. This is the order which transfers it. The statute says that in case of any such liquidation or reorganization any other Federal Home Loan Bank may—I take it “may” allows some discretion on the part of an existing bank—with the approval of the Board, acquire assets of such liquidated \* \* \* and assume liabilities therefor.

Now it may be that that means “shall,” but until the Supreme Court tells me that this particular “may” means “shall” when directed by the Board, I am going to read the [828] statute in the way that I ordinarily understand the English language.

Mr. Bishop: Well, my answer, your Honor, to that proposition is simply this: Over a period of four years the monthly statement of the Bank is approved by our board of directors and those statements have been introduced, some of them, into evidence by our opponents, and there are the admitted and assumed liabilities and obligations of our bank, which it has never denied and which our directors have never challenged.

Mr. Fitting: If the court please, I think I have an easy answer to this assumption question. The



question is, as it bears on good faith, as I understand it.

The Court: And reasonable grounds.

Mr. Fitting: And reasonable grounds, that is right.

The Court: Not reasonable doubt.

Mr. Fitting: Reasonable grounds.

The Court: Reasonable grounds.

Mr. Fitting: Reasonable grounds at the time the suit was brought. Now these books have been, as counsel have stated, just been produced——

The Court: They have been in the hands of the Board for a long time. If there was anything in them that would show assumption of liability, I should think they would have been produced. But go ahead. [829]

Mr. Fitting: The question is, was it brought in good faith when it was brought. On this question of assumption, what did the parties think when they brought the action? Their verified complaint, on page 13, line 23, subparagraph (g)—this is the verified complaint to enforce legal and equitable claims, to obtain possession of and to remove liens from and clouds upon title to property and for other general relief of the bank and the class; these are a list of allegations of what Mr. Fahey did—subparagraph (g):

“On information and belief, to coerce and he did coerce the said Portland Bank, its directors and officers, wholly without the opportunity of exercising free choice in the matter, into purportedly



acquiring the assets and assuming the liabilities of the Los Angeles Bank."

The Court: Purportedly assuming.

Mr. Works: Under coercion.

The Court: That is what they allege.

Mr. Fitting: The question is, did they assume them. Here they say they were coerced into assuming them.

The Court: The question is not, did they assume, the question is, is there reasonable ground for the plaintiff to be here in court with this lawsuit.

Mr. Fitting: And the question, as I take it, one of the points relied on to show reasonable grounds was that there was [830] no compliance in that Portland never assumed them.

The Court: There is no showing that they have. In fact, there is just the contrary shown by the evidence here.

Mr. Fitting: I say that in their complaint it indicates that at the time they filed their complaint they were under the impression that Portland had assumed them.

The Court: Purportedly assumed them, it says.

Mr. Fitting: Purportedly assumed them, yes, but by "purportedly" they meant that it was an involuntary assumption.

The Court: What is the first part of that again?

Mr. Fitting: On information and belief, to coerce and he did coerce said Portland Bank.

I just wanted to call that to your Honor's attention.

The Court: Very well.

Mr. Angell: I just wish to call to your Honor's attention, as a matter of law that one whose obligation was not assumed and who had not been paid might raise these points, but how they can be raised by the Los Angeles Bank, or anyone else who has not shown one iota of injury from such non-assumption, if it humanly could be possible that such was the fact, but this being a public instrumentality it lay within the power of the commissioner to say it is a new creature, as to its business out here on the Coast, you are going to take over those obligations. That is nothing more than an [831] argument of the Board at Washington to carry on its administrative functions.

Now it may be that Los Angeles has a vested right to the maintenance of a bank here. If it has, it is the only locality in the United States where such is the fact. They moved other banks within the United States and there were no such suits as this which followed. They moved the head places of those banks. California did not, under the act or any law, have a "lead-pipe cinch" on the control of the board of directors of the Los Angeles Bank, or any other bank. As a matter of fact, it was the only bank in the United States that happened, by reason of the location where one state could elect all of the control of that bank.

All of those are wholly specious arguments. The law says how much each state is entitled to as to representation on each bank. It says there shall be one, and California has had its one.

Now the point is that for four years the San Francisco Bank has functioned, it has assumed those obligations, there is no showing here that they have not paid those obligations, there is not a single creditor here complaining about obligations, and how that could possibly be involved in this litigation is beyond comprehension.

The Court: Mr. Bishop, another question of you: Are there any rules and regulations now in force concerning and [832] regulating the matter of liquidation or dissolution of Federal Home Loan Banks?

Mr. Bishop: Not that I know of.

Your Honor, in conclusion, I think the best illustration of the weakness of our opponents' position here, and the seriousness of the question before the court, is this: There isn't one case before the court that would authorize, in a case of this kind, this court to make this award, and they cannot point to such a case because they haven't got a case where it involves a Government instrumentality owning more than 51 per cent of the stock, as was true in this case at the inception of this lawsuit. And I concur in Mr. Angell's remarks that certainly Uncle Sam can change the name, the place, etc., of this bank any time he wants to without rule or regulation when the act says he can.

Thank you.

The Court: Is that all? You have nothing further, Mr. Angell?

Mr. Angell: Nothing further.

Mr. Dusenbery: Nothing further from the San Francisco Bank.

The Court: Very well.

Mr. Angell: Pardon me. Your Honor, I was looking for a rule. You asked whether there were any rules in effect at that time. I believe there was a rule in effect at that time. [833] I believe it says something to the effect that 20 associations objecting to any order of the Board could present a petition or request to the Board for a hearing on any such order.

The Court: Of dissolution or liquidation?

Mr. Angell: I believe any order. I believe it is a general provision. And there is no evidence here before the court that any such request for a hearing was ever had or filed. If I locate it, I will give your Honor the rule.

The Court: What is the section of the statute that provides that the Federal Deposit & Insurance Corporation will be appointed receiver for liquidation? Do you recall, Mr. FitzPatrick?

Mr. FitzPatrick: That is in the Home Owners Loan Act, not in this Federal Home Loan Bank Act.

The Court: Well, it is in Title 12, Banks and Banking, is it not?

Mr. FitzPatrick: It is the Home Owners Loan Act and I believe that is 1461 of Title 12.

The Court: Yes.

Mr. Chapman: I have the text of it. I don't know whether you have the reference to the code or not. It is in the creation of the Federal Savings



& Loan Insurance Corporation, which is part of the Insurance and Savings Accounts under the Act providing for insurance of saving accounts as [834] amended. The section is liquidation of insured institutions, subdivision (b), which says that in the event that a Federal savings and loan association is in default the corporation shall be appointed as conservator or receiver and as such is authorized to take over the assets, etc.

And then in Section (c), that in the event any insured institution other than a Federal savings and loan association is in default the corporation shall have the authority to act as conservator, receiver or other legal custodian of such insured institution and the services of the corporation are hereby tendered to the court or other public authority having the power of appointment, and then it goes on.

The Court: You mean the statute recognizes that a court might appoint a receiver?

Mr. Chapman: Congress doesn't seem to go quite as far as the Board.

The Court: Did you find the rules and regulations effective with particular relation to liquidation of Federal home loan banks?

Mr. Bishop: Those sections in the Federal Insurance Act are only in relation to institutions about the appointment of conservator-receiver. That is not in relation to an association.

The Court: I do not know what a bank is if it is not an institution. [835]

Mr. Bishop: Well, it isn't an association that is



insured under the Act. We are not an insured institution. Our depositors are not insured to the extent of \$5000.

Mr. Fitting: If the court please, 1446 of Title 12 says that the bank can be liquidated.

The Court: That is the one I just read the whole text of.

Mr. Fitting: Yes, in accordance with such rules, regulations and orders. Now the orders were issued, and I think it is a fair reading of the statute that it can be done by rules, regulations or orders. To liquidate a bank you don't have to have a rule and a regulation and an order.

Mr. Bishop: Those orders have been held to be regulations.

Mr. Chapman: May I have the number of the other section that was mentioned?

Mr. Angell: I am still looking for it.

Mr. Works: I think we understand what your Honor is talking about even if the other side doesn't, which is simply the mode as the measure of the power, and that is a question which anybody can raise with reference to what a public officer does or does not do.

May I just say one word, your Honor—and then I am through—in order to correct what I believe is a misapprehension of Mr. Fitting about the Eggert case. [836]

The Eggert case was an interim application. The application was made in the lower court while an appeal on the merits was pending in the upper court. The judgment had not become final against

Pacific States. The fee decision was reported in 53 C. A. (2d) at page 554, and the decision was rendered July 24, 1942.

The decision on the merits, if your Honor please, affirming the judgment below against Pacific States on the merits was reported in 57 C. A. (2d) at page 239, and the date of the opinion is February 23, 1943.

Both in the fee appeal and in the appeal on the merits a hearing was denied by the Supreme Court of California.

I have nothing to add unless your Honor has some questions.

The Court: No.

On the matter of rules and regulations, I am not concerned now with so much an interpretation of the statute, I am merely inquiring whether or not there were any.

Mr. Works: I have never heard that there were any. If these gentlemen would show them to us, we would be happy to see them.

The Court: Were there any at that time and none since, is that correct?

Mr. Works: That is my understanding, your Honor. Mr. FitzPatrick knows more about the decisions than I do. [837]

Mr. FitzPatrick: That is my understanding, your Honor. At the time of this seizure, in March, 1946, there were no rules and regulations of the Home Loan Bank Board providing for the merger or liquidation or reorganization of Federal home loan banks. And there are none since.

The Court: Mr. Westover, you wanted to make your statement?

### ARGUMENT IN BEHALF OF SHAREHOLDERS' COMMITTEE

Mr. Westover: Your Honor please, on behalf of the Shareholders' Committee of the Long Beach Federal Savings & Loan Association, plaintiffs, who instituted Action 5421-PH, the first action, on May 27, 1946, I might state that our position, first, is that certainly counsel—and apparently all agree—are, like the laborer, worthy of his hire. The question seems to be a question of who pays.

There certainly is a compelling necessity at this time that some allowance be made for payment of counsel for the Los Angeles Bank and for the First Federal Savings & Loan of Wilmington, the plaintiffs in Action 5678, which was instituted a few months later, in August of 1946, and which repeatedly has been represented to this court by letters, I believe from the Board, the Home Loan Bank Board at Washington, as inextricably interwoven with the first action, 5421-PH. I think that is also borne out by the recent——

The Court: I decided that before the Board did. I consolidated [838] them.

Mr. Westover: That is right, your Honor. That was consolidated, and apparently they are all in agreement on it, even counsel, Mr. Verne Dusenbery, agreed in the points on appeal with the Government's position that the claims in the second

action, referring as they set it up to 5421-PH, are inseparable from those alleged in the other consolidated actions. Hence it would appear that the two actions are completely interwoven and consolidated, and there seems no argument on that, as well as the fact, or in addition to the fact, that your Honor did consolidate them several years ago.

That being so, it seems to me that the original jurisdiction taken, assumed and exercised and carried out by your Honor, based upon old Section 118, I believe it was, of Title 28, based upon the interpleader provisions of Section 2641 of Title 28, I believe it was, and on the other grounds of interpleader, applies to both cases and I think it is well established that the jurisdiction would be assumed by a court of equity and that that court is not deprived from that jurisdiction once it acquired it and had it and exercised it. It is not deprived by some subsequent act or change in circumstances of the litigation. So if you ever did have jurisdiction, I feel that you certainly still have jurisdiction.

Now there definitely have been numerous orders and findings in various matters that have specifically found that you [839] did have jurisdiction. Such orders have been either appealed or the time for appeal expired. They have been affirmed by failure to appeal or they have been affirmed by dismissal of appeal, not once but several times. Hence the question of jurisdiction seems to me is pretty well determined already.

The question of reasonableness of the institution of the original actions and the reasonableness of the



grounds for bringing the actions has, I feel, been laid at rest by the Supreme Court of the United States itself in *Mallonee v. Fahey*.

The Court: So I would guess.

Mr. Westover: It seems to me we have been doing a lot of arguing about that. The court there said, at page 11 of this little memorandum opinion, on June 23, 1947, speaking through Mr. Justice Jackson:

“Nor do we mean to be understood that if supervising authorities maliciously, wantonly and without cause destroy the credit of a financial institution, there are not remedies.”

Then skipping some of the other matters and going to the bottom of that page and resuming the quotation:

“It is obvious that there is more to this litigation than meets the eye on the pleadings. The plaintiffs’ charges that ill will and malice [840] actuated the supervising authorities, as well as the charges of the defendants that the institution has been mismanaged and that the management is unfit, are alike undetermined by the courts below, and we make no determination or intimation concerning the merits of these issues or as to other remedies or relief than that in the judgment before us.

“Our decision is that it was error in the court below to hold the section unconstitutional, to oust the conservator or to enjoin any of his proceedings or to enjoin the administrative hearing, and this without prejudice to any other administrative or



judicial proceedings which may be warranted by law.”

We are now proceeding under such judicial proceedings.

Likewise there has been indication that attorney fees, according to the so-called “ultimatum” letter from Mr. Ford, the assistant to the United States Attorney General, to the effect that attorney fees should be determined in adversary proceedings, and hence that is being done here.

Now as to the question of who should pay these attorney fees, obviously the amount is one that is clearly, I think, apparently concededly within your Honor’s determination and in the exercise of your discretion. [841]

As to the funds from which such attorney fees should be paid in making an interim allowance, I think that in addition to Section 26 of the Home Loan Bank Act, the one which has been here under discussion about their having been no assumption of the liabilities by the Portland Bank—I might digress a moment to say that last night during the period of time we were allowed to examine the minute books, I particularly looked for any resolution of the Portland Bank or of the San Francisco Bank specifically assuming any such liabilities or agreeing in any way, or any language to make such an assumption of liability to comply with the provisions of Section 26 of the Act.

The Court: What was the date of those minutes where they show that the Portland board did

not authorize it? I read them last night. It is not in those of April 8th.

Mr. Westover: No. As a matter of fact, not only did the board make no resolution of assumption of liabilities, which I take it is an affirmative act, not just one of negation, but likewise the stockholders on July 28, 1947, at San Francisco, at a stockholders meeting which is in the so-called black book, your Honor, the other book, specifically by a majority vote of the stockholders in their stockholders meeting specifically passed a resolution to the effect that the San Francisco Bank did not exist, that there wasn't even a meeting of the San Francisco Bank stockholders at all, that [842] it was a meeting of the stockholders of the Portland Bank and of the Los Angeles Bank and that the orders, according to the stockholders, of the commissioner were apparently invalid.

Likewise the stockholders in 1948, prior to the filing of the order to show cause here in July of 1948, had adopted and voted to the effect that the funds of the San Francisco-Los Angeles-Portland Bank, or whichever one existed, should not be continued to be used to prevent the restoration of the Los Angeles Bank and the Portland Bank.

In spite of that, the directors and the officers of the so-called San Francisco Bank have continued to use those funds in opposing the recovery by the Los Angeles Bank of its funds and assets, and now they are here today continuing to oppose the right of the stockholders, contrary to the wishes of the stockholders, to allow those same stockholders any

portion of their funds to finance the litigation to recover their assets.

Now Mr. Dusenbery suggested this morning that there was no concept under which the attorney fees could be paid for the recovery of assets wrongfully taken. I haven't time to bring decisions to your Honor, but I think it is a well-known principle of law that in a conversion proceedings the costs of expenses of recovering the assets wrongfully taken or converted can be assessed as damages, and that one of the elements of such damages is attorney fees in the recovery of the [843] wrongful taking of assets.

Hence it seems that certainly under our complaint as amended and otherwise this started out to have in one count a conversion, seeking recovery of assets wrongfully taken. Hence it would appear that under that theory also the attorney fees can be allowed, at least an interim allowance.

Now at this time somebody has got to—it is a matter of compelling necessity—advance the necessary funds to permit the litigation to continue on behalf of the Los Angeles Bank and its shareholders committee, and while I do not feel that the Long Beach Association as such should be required to bear the burden of the entire cost of the efforts to recover the assets of the Los Angeles Bank, it does appear that the funds in court can properly be used as a means of supplying an interim allowance for advancement on account of attorneys' fees to counsel representing the Bank and the other association with Mr. Gilbert, and that your Honor

can either at this time determine and assess, if you feel so inclined to, and should advance those funds.

I feel that in the long run and in the final analysis the entire cost of attorneys' fees for recovery of assets should be borne by whoever is ultimately determined to be the wrongdoer, and that certainly should not be the Long Beach Association, who was the victim.

For that reason I feel that the 16,000 shareholders of [844] the Long Beach Association should not be required to be burdened with those costs excepting as they might be required as their pro rata share as a stockholder of whatever bank may ultimately be found to exist, if such ultimately determined existing bank is assessed some costs.

The fees at this time might well be taken out of the funds in court. I feel they should be assessed against the San Francisco Bank, or rather the Portland Bank, as it is sometimes or formerly known, and their assets in court, if they have any under the final and ultimate determination. Otherwise your Honor should reserve, in my opinion, the question of who is to be assessed such attorneys' fees for final determination of the litigation.

Thank you.

The Court: Mr. Chapman, how long do you expect to be?

Mr. Chapman: I think 15 minutes or less, your Honor.

The Court: Maybe we can have a short recess.

(Short recess.)



The Court: Mr. Chapman.

ARGUMENT IN BEHALF OF LONG BEACH  
FEDERAL SAVINGS AND LOAN ASSO-  
CIATION

Mr. Chapman: Your Honor, it is interesting to listen to the very plausible statements that nobody was harmed and nothing was done and they just sort of changed the name and moved the district, something like that. To really appreciate what went on and the matters that brought on this litigation, [845] you have to personally experience it, as we did in Long Beach—the lines of people clamoring for their money, the run.

Now in the Los Angeles Bank it was a little different situation. Those were the associations that were one step removed, but the bank to which they looked for their emergency funds in time of trouble suddenly was changed. For their purposes it had disappeared. The board of directors who had the power to grant them loans or deny them loans when they were in trouble were not the board of directors they had elected. It was one chosen by the defendant Fahey.

That, however, is a minor point, as important as that is. On the night of the 28th of March, 1946, the Los Angeles Bank existed and it had \$46,000,000 to defend itself with, and if anybody had undertaken due process or legal procedure it would have defended itself.

Now the question before you now on these attorney fee applications is simple. Can the seizing



defendants deny due process of law? Can they by summary seizure, without notice, hearing or trial, denude this bank of every asset and leave it helpless to make any defense? That is the simple question before you.

If they can, the due process clause of our Constitution means nothing. And as far as the United States Supreme Court went in upholding estoppel in *Fahey vs. Mallonee*, they left due process open. They upheld your Honor's award of \$50,000 [846] to counsel to try this litigation, and they did it at the very hearing and in the following opinion to the one in which they said that the act was constitutional. By so doing they made the law of this case that due process was to be granted, and the defendants who had their property seized from them and had to become plaintiffs, had a right to enough of their own assets to be heard, to bring their grievances to a fair and impartial court and have a trial. And if these things that were done were all proper, then they can be upheld.

But if they were wrong, the seizure and the starvation of attorneys and parties for four years should not decide the litigation. It should be decided on the merits, and you can't do that without full judicial proceedings, and in litigation of this magnitude you can't have full judicial proceedings with no attorneys, no resources and no funds. I know whereof I speak because we had to try without any assets to get our bank back, and we did it, but we only did it with all the efforts we put forth, because your Honor made us an allowance to one

counsel of the Shareholders Committee out of our assets regardless of the fact that somebody had tried to confiscate them. And that is what you are being asked to do for the Los Angeles Bank.

I have never forgotten Judge Mathews in the Circuit Court. We were fighting the stay. The Supreme Court had [847] denied the writ, where they made you a defendant, and said that it won't hurt to pay Mr. Westover enough money to have the case tried. And these same gentlemen, or their predecessors—we seem to have shifting teams here each time as time goes on—urged you to stay the order that you made after the Supreme Court hearing, and you denied that stay.

They immediately dashed to the Circuit, and that was the last court they could get to. They ran out of courts. You said we could have enough funds to try our case on the merits, the United States Supreme Court said we could have enough funds to try our case on the merits, but the Circuit hadn't said so yet. So they dashed up there with a stay of execution application.

Mr. Westover didn't think it proper to argue his own fee application. I argued it for him. And Justice Mathews asked the question, he said: "What, Mr. Chapman, if it turns out after we give you this money and let you try this litigation, that you are wrong, that the conservator was properly appointed and everything was correct in the seizure?"

And I gave him the question back: "Put it another way, suppose we are right but for lack of

funds to prove it we lost not on the merits but from exhaustion. Is that American justice?"

And the stay was denied.

The interesting part of that is that these people that [848] have fought the fees so hard and were so proud of the merits of their seizure were afraid to abide the events of that appeal. We now had some finances and we were going to a trial on the merits, and they didn't dare face those merits. They gave back the institution and they dismissed the appeal. That is the result of financing the litigation just to the point where it can be tried. They are afraid to face the issues.

I wouldn't be the slightest bit surprised, if your Honor gives the finances for a trial on the merits to the Los Angeles Bank to see them give the bank back rather than dare face the issues on the merits in that case. They are wonderful in dashing to courts and complaining that for four years there hasn't been a trial, but when it comes right down to it they would rather give the Long Beach Association back rather than go to a trial on the merits.

It is true they tried to get it back a couple of years later. They thought they would get it back a few years later, but this time they didn't dare defy your judgment. They had to give some notice. There had to be some due process. Now we are fighting that all over again.

The real question before you is just about the question that was before you when you made the allowance to Mr. Westover. Is there to be due process or isn't there? I would like to read you

from that stay order. I think it was one of [849] the most decisive orders in the litigation because when that became final from the Circuit's refusal of a stay in December——

The Court: I remember it. I got it out and read it this morning.

Mr. Chapman: I would like to put it in the record, your Honor. We may be upstairs again some day. I don't like to bore you with it, but we were up there just two weeks ago and I think it is a good idea to have a fair record. They even tried to cut our designation of appeal on the record of this appeal. They said, just listen to our side of the case, Circuit Judges.

The Court: Are you going to read the whole order?

Mr. Chapman: No, just about four or five lines. It is page 6 of official page 3239 now for appeal, starting at line 2:

“It further appearing that the assertion of the rights and claims by the plaintiffs did require and does require that they and counsel take an active part in the litigation and the incurring of enormous expenses for the preparation of pleadings (which in this case have been voluminous, multiudinous court appearances, for the preparation and printing of records and briefs on appeal, and other incidents to litigation; that it presently [850] appears that the within action was commenced and is maintained by the plaintiffs in good faith for the avowed purpose of protecting and preserving the rights, interests, assets and properties in said association of



themselves and others similarly situated, and that due process of law for ultimate justice requires a trial and determination on the legal merits, or both legal and factual if the issues are not disposed of on the legal merits alone, and that in view of the whole record and files herein it would amount to a denial of due process to compel plaintiffs to pay the expenses and counsel fees heretofore allowed or to compel plaintiffs and counsel to await the final determination of the issues of said litigation for the payment of said fees and expenses; \* \* \*"

That was literally for the Long Beach Association.

The Circuit approved it and they dismissed the appeal after the Circuit hearing when they ran out of courts and couldn't delay the payment of fees any more, and once we were financed they were afraid of a trial and gave the Association back.

Now I think this is vitally important on this point. I notice counsel have suggested that you make a personal judgment against the San Francisco Bank. Well, it is their attorney [851] fees and their application and I probably shouldn't talk about it, but I think we are concerned——

The Court: No, I do not think counsel has asked for a personal judgment.

Mr. Works: By no means.

Mr. Chapman: I am glad I misinterpreted it.

The Court: He asked for an order on the funds, a personal order directing them to pay it.

Mr. Works: Either against the impounded funds or the general assets as your Honor feels proper. I



was merely talking about jurisdiction, that you could follow either one of two courses.

Mr. Chapman: It is my belief that the law of this case has been established, not only for the Long Beach Association but for the Los Angeles Bank, that you can pay money to the class plaintiffs out of their assets in court, and that even a stay won't touch it if you do. Now if you vary from that I think you bring a new point into the award, that while it might be sustained I think we would be weakened.

The Court: You mean out of the assets in court?

Mr. Chapman: The assets in the registry. Those assets consist of the four notes——

The Court: You mean you are suggesting that it is doubtful that Mr. Works' position is correct legally that I can make a personal judgment against the San Francisco Bank [852] directing it to pay money in their possession belonging to the association and about which this litigation is concerned?

Mr. Chapman: I don't think it is doubtful, but I don't think it is as strong. It isn't the law of this case, the way the former award was made. And I am reminded very much of my own fee application and that of Mr. H. O. Wallace—he since died in Washington, as you remember, in fighting this case—both of us were coming up in the afternoon. You had allowed Mr. Westover \$50,000 in the forenoon and we were thinking, well, it looks like the litigation is going to be financed, and feeling rather happy about it, and we came back in the afternoon and you put my application and Mr. Wallace's ap-

plication off calendar and, to put it mildly, we were severely disappointed.

But the wisdom of your Honor's action in not making an award to the seized association or its counsel pending the restoration of that association was demonstrated when the writ was taken to the United States Supreme Court and we fought the fee issue there, because in allowing to the corporation itself there could be a question whether or not that involved the legal existence of the corporation.

In other words, there was a question as to whether 5082, 3, 4 and 5 were valid or not valid. But if you allowed it as a class there could be no doubt about that under any circumstances. Had you allowed it to our Association there might [853] have been some doubt in our case whether Ammann would try to reach for that award and control it. If you allow it now to the Los Angeles Bank there could be some doubt at some later happening in this litigation whether the San Francisco Bank wouldn't try to grab and control that award, as they have tried to control the \$46,000,000 that they seized. But if you allow it to the class shareholders of the Los Angeles Bank, as you allowed it to Mr. Westover and the class of the Long Beach Association, it is impossible for any seizure to reach that.

In other words, the defense fund, the fund to test the validity of this confiscation, remains beyond the control of those who seized the rest of the Los Angeles Bank's assets. I say that either position is legally strong, but that the strongest position should be taken. I haven't the slightest doubt but that if

your Honor makes any allowance of any kind that there will be proceedings taken. I don't know whether they will try to make you a defendant again as they did the last time or not. They might have learned a lesson from last time, but there is no telling. In any event, I think that the law of the case should be followed.

Now the seizure of the Los Angeles Bank was before the Supreme Court in *Mallonee vs. Fahey*, the third-party complaint which I filed on the 1st of July, 1946.

The Court: They did not pass on the issues in that, [854] though.

Mr. Chapman: They did not, that is correct, but nevertheless in the opinion there is a mention of a prior seizure and very significantly in the briefs on appeal the gentlemen who seized both institutions asked that that third-party complaint be stricken and dismissed, and they didn't get it. The remand came on back down for all proper proceedings.

When you ask the Supreme Court for something and you don't get it, you can say, oh, it wasn't decided, but I think that the mandate and the remand are just as much part of the Supreme Court proceedings as the opinion and, as Mr. Westover has read, the mandate was for further legal proceedings in conformity with that opinion, which included the award of \$50,000 to try the Long Beach litigation. I don't doubt but that people are going to say, why am I concerned with all this. I don't think it is necessary to go into the history of that. Our pleadings show that we were seized because we re-

sisted the Los Angeles Bank confiscation, and your Honor's point on attorney fees is exemplified in the congressional committee's report. Reading now from page 22:

“After a full probe of the grounds upon which Mr. Fahey appointed Mr. Ammann as conservator he conceded that he had appointed a conservator because of the \$100,000 appropriation, characterizing it as an unreasonable and exorbitant amount to [855] be spent for that purpose.”

Actually there was a \$100,000 appropriation and a \$50,000 check. That check came before you in interpleader less than two weeks after the institution was seized, almost as soon as there was a court action in which we could deposit the check, and we tendered the issues of that check on our attorneys' fee applications.

They said they seized us for that proposition and would they submit those issues to you for decision? The records show what happened on the fee applications. They said no court can do it, nothing on the merits, not even a word of denial of the seizure, nothing on the value any more than there has been on the Los Angeles Bank—just nobody can have any power over us. We are immune from the courts.

When you said, no, I can award enough to have a trial on the merits, they tried direct to the Supreme Court, they tried direct to the Circuit, and they lost in every Federal court that they could get in on the question of fees.

Now if your Honor is determined to make an



award—and I think an award is proper and should be made—I think you ought to follow the path that we tried to blaze through those court proceedings. It was hard work. It took a lot of nights and a lot of holidays and a lot of Sundays. And it has been followed now by us the second time, and they finally abandoned their fight on it only because we apparently believed [856] too much of the new Board. We thought they meant it when they said they would settle if they gave us part of our fees. And the very jurisdiction they conferred on you in their letter, when they said in adversary proceedings the court is to determine the matter, that isn't even worth the paper it is written on. But I think I am getting a little into the merits now.

The law of the case as to class plaintiffs would also indicate to me one other thing, that the award should come from assets in the court about which there can be no question that these plaintiffs have ownership. In other words, the four notes for \$6,-300,000 were created by San Francisco taking seized Los Angeles Bank assets and lending them to Ammann. I haven't any doubt on the trial of the merits that those specific assets can be traced. I don't think we have to do it for a fee application. But all that there was in the San Francisco Bank was the \$46,000,000 they seized on the 29th of March from the Los Angeles Bank and the \$9,000,000 of Portland assets that they mixed up with it. Out of that they loaned \$7,300,000 less than seven weeks later, and that is the assets that went into those four notes. We deny any liability on those notes,



and your final judgment may well say that we don't owe anything on those notes. But the present awards, at least in the amounts suggested by the experts, are less than 5 per cent of the assets in there. I [857] think actually the percentage is lower than 5 per cent.

The Court: What is the total amount of fees that have been allowed to date?

Mr. Chapman: Including special master expenses, costs and everything?

The Court: Excluding the special master.

Mr. Chapman: Excluding the special master, about \$265,000 in round numbers, your Honor. That may vary as much as \$2000 one way or the other.

With the special master included I think it comes very close to \$300,000, which is still minor in litigation that has gone as far as this has and lasted as long as this has.

Now following my suggestion through, if you make an award, whatever amount it may be, and determine now that that shall, in the final accounting, come out of the \$6,300,000 in notes, it is bound to be out of the assets belonging to the class. I can't say out of the assets belonging to the Los Angeles Bank, I don't know how the litigation will come out, but certainly these applying stockholders, the five plaintiff associations represented by Mr. Works and the one represented by Mr. Gilbert, are going to represent the class of either Los Angeles Bank stockholders, San Francisco Bank stockholders or Portland Bank stockholders, and that is all the classes there can be, and they are the real owners

of the assets represented by the \$6,300,000 in court, because a corporation [858] and its officers and directors are only trustees. They don't own the assets, they are administering them for the true owners, the stockholders, and that is the doctrine that I think prevailed in the Long Beach case.

Certainly when you allowed Mr. Westover on behalf of his 16,000 depositors some of their own money, there couldn't be any doubt whether Ammann was validly appointed or invalidly appointed; it was the shareholders' money, and if you allow something to the class represented by Mr. Works and Mr. Gilbert and Mr. FitzPatrick, no matter which bank there is, there can't help but be the money of the stockholders of that bank.

Now another point arises. If you award it out of the assets in court your judgment is not subject to a stay by the Government. They call themselves—I don't like that word "government"; I respect my Government, but the defendants who committed these seizures—they can't just by filing an appeal stay that judgment because it is an order from you to your clerk. It doesn't require the United States Marshal to go out and levy an execution. You simply make an order to your clerk to pay these plaintiffs some of their own money so we can try this litigation. If they want that stay they have got to apply to you for the stay and if you deny the stay and they appeal somewhere they have got to try in the appellate court for that stay, and they don't get the [859] stay even if they want to post a bond for it. It takes an order of yourself or of one

of the Justices of whatever appellate court they go to. I think that is why they took the writ the first time. It didn't cost a dime to tie the thing up for four months more to see what they could do on the writ.

Your Honor, I am confident that due process will prevail in the Los Angeles Bank case as it has in the Long Beach case. I think the very fact that they returned the Long Beach Association under the pressure of the litigation fund justifies and furthers the fact that the Los Angeles Bank should have money allowed to its class plaintiff shareholders to test the merits of that confiscation, because if you don't all you are doing is saying, don't ever give notice, don't ever give due process, just confiscate the assets and if you take everything they have got they can't ever litigate it.

That ends my argument, your Honor.

Mr. Works: Your Honor, I had thought I was through but apparently everything that I have been saying today has been misconceived. The application of the Los Angeles Bank is based upon the proposition that it was depriving the Bank of the means of defending itself. The whole due process argument, the cases we have cited, runs in favor of the despoiled party who is attempting to avail himself of the rights of due process. We feel by all means that the award should be [860] made to the Bank and that will inure directly to the benefit of the member stockholders, and there you have an undoubted due process right which is a higher right

than the ordinary trust fund doctrine exemplified by cases such as the Greenough case.

The Court: What is the difference? The award is to be made to counsel. Counsel are appearing here as attorneys in a class suit. If I make any award, I am not going to say, well, you get \$8.50 for representing the Los Angeles Bank and \$5.30 for representing the other plaintiffs.

Mr. Works: I know, your Honor. I have this thought in mind—perhaps I am wrong; I quite frequently am—but I have seen authorities which indicate that in cases of this sort the award should be made to the client and not directly to the attorneys.

The Court: Should be made to the client?

Mr. Works: I have seen cases to that effect. Now I don't know what your practice here has been.

The Court: I have made the awards to the attorneys.

Mr. Westover: Ours was made to us direct.

Mr. Chapman: Always to counsel in this case so far.

Mr. Westover: Ever since the Richfield case came through this court.

Mr. Works: It has been done both ways and I may be wrong. Now if it is made to counsel for services rendered in [861] connection with the case, that is one thing.

The Court: If there is any award made, it does not seem to me as though I should make it to the client because then if I make it to the client it leaves it up to the client finally then whether or



not he is going to give it to his lawyer or stick it in his pocket. I do not mean to suggest that that is present here, but the award is to counsel for services.

Mr. Works: Then your Honor answers most effectively both Mr. Chapman and myself because he was pleading for an award, as I understand it, to the class plaintiffs, the Association. Now if the award is made to counsel for services rendered in this case——

The Court: It is counsel's application, is it not?

Mr. Works: It is a motion made by the bank and by the member associations for an award of attorney fees for services rendered by counsel, as your Honor has pointed out.

The Court: Mr. Gilbert, do you have any rebuttal?

Mr. Gilbert: Your Honor, I have perhaps a minute and a half or two minutes.

The Court: Where are your applications?

Mr. Fitting: January 7, 1949.

The Court: January 7, 1949?

Mr. Fitting: Yes, about then.

The Court: Is that Mr. Gilbert's? [862]

Mr. Fitting: No, that is O'Melveny & Myers and Mr. FitzPatrick.

The Court: What was the date of your application, Mr. FitzPatrick?

Mr. FitzPatrick: January 5, 1949.

The Court: On January 6, 1949, there was a supplement to that, was there not?

Mr. Works: Yes.

Mr. FitzPatrick: Yes, there was.



Mr. Fitting: That was about July 11, if the court please.

The Court: I think the clerk has that now. Now, if I can find Mr. Gilbert's.

Mr. Gilbert: That was in early February, your Honor.

The Court: Your request for allowance of fees is to June 30, 1949.

Mr. Works: I was laboring under a misconception. The motion was made by the Bank and the member associations, which I think is proper for an order directing payment to the attorneys in conformity with the practice in this case.

I was under a misconception as to who should make the motion and who the payments should be directed to. Now, your Honor, upon that basis, if an award should be made, we have no objections whatever, as I have indicated before, to it being paid out of the funds in the registry, if your [863] Honor cares to do it that way. I agree with Mr. Chapman on that.

The Court: Very well.

Mr. FitzPatrick, do you want to make an argument?

Mr. FitzPatrick: No, your Honor. Silence is golden.

The Court: Mr. Gilbert?

Mr. Gilbert: Our request was the same.

The Court: Where is your affidavit, Mr. Gilbert?

Mr. Gilbert: The affidavit was filed at the same time.

The Court: Affidavit showing your hours worked, and what not?

Mr. Gilbert: Yes, your Honor.

The Court: I do not find it on that date.

Mr. Gilbert: It may have been filed a day or two later.

The Court: Yes, February 20. All right.

Now, you said you had two points that you were going to make in two minutes.

Mr. Gilbert: Or less, yes, your Honor.

The first one was with reference to a remark made by Mr. Fitting and a number of counsel. I just wish to invite your Honor's attention to *Winslow v. Ferguson*, 25 Cal. 274—incidentally, that was the case in which Mr. Tremaine had been awarded an interim allowance—on page 284, where the court pointed out that even though counsel may appear for only one claimant he still, other things being equal, is entitled to [864] be paid counsel fees.

Secondly, your Honor, I had intended to mention this and overlooked it, but your Honor recalled the opinion this morning with respect to the denial of due process of law if counsel fees are denied. Your Honor wrote that opinion and filed it September 30, 1947, in connection with the order denying application for stay of execution.

The Court: That is the one that Mr. Chapman just read?

Mr. Gilbert: Yes.

And, lastly, your Honor, I would like to remind you of these facts, and which appear in the con-

gressional report, from which it appears that on March 15, 1946, the Los Angeles Bank made an appropriation to defray legal expenses in connection with the congressional hearing in Washington, on March 18th, that information reached Washington, and on March 29, they were taken over.

Other than that, your Honor, I have no other or additional argument at this time.

Mr. Dusenbery: May it please the court, I would like to ask one or two questions to try to clarify this in my own mind on one or two points which Mr. Chapman made in that most astounding argument that he has just concluded.

The Court: I have never seen lawyers so surprised at what the other lawyers say.

Mr. Dusenbery: One point is this: I would like to ask [865] him whether he is suggesting in that argument that if any award is allowed on these fees that it be paid out of the collateral securities which are in the registry of the court under the impound order relating to the \$6,300,000, of notes and \$5,300,000, of bonds and the \$1,000,000-odd cash that has been earmarked as collateral security for those notes in that so-called interpleader impound proceedings. Is that your suggestion?

The Court: I do not know that they are earmarked. Maybe they are. There was a substitution of collateral made.

Mr. Dusenbery: That is what I am referring to, your Honor.

The Court: I do not know whether they are earmarked.

I understand Mr. Chapman's position. If I understood it, it was that the allowance instead of being assessed out of the funds claimed by the Los Angeles Bank and the members of the class now in the hands and possession of the San Francisco Bank, that it would be ordered paid out of the funds on deposit in this court which are up as security for any obligation to either the San Francisco Bank or the Los Angeles Bank in a proceeding that it ultimately should be assessed against that fund.

Mr. Dusenbery: Is the Long Beach Association consenting to the use of that collateral security for that purpose?

Mr. Chapman: Mr. Dusenbery, we are suggesting that the [866] court has the power to award attorney fees and by not making any opposition we certainly want to have some say in the order and expect to participate in the drafting of it if there is an allowance of any order. But in so far as consenting that an allowance for the Los Angeles Bank come out of the assets of the Los Angeles Bank, the answer is yes.

The Court: His point is that you consent that they be paid out of money of the Long Beach Association.

Mr. Chapman: No, absolutely not.

The Court: Very well. That is his question.

Mr. Dusenbery: Are you consenting that they



be paid out of the collateral security in the impound to which I referred?

Mr. Chapman: If we are given an offset against the \$6,300,000, certainly.

Mr. Dusenbery: Are you asking the court to make that offset?

Mr. Chapman: I am going to await a ruling.

The Court: His request was that at this time the court determine. In other words, if I understood his position—and I tried to follow it—it was this, that the allowance be made out of funds in court but that they should not be made out of money belonging to or ultimately to be paid by the Long Beach Association.

Mr. Chapman: That is right.

The Court: Is that not correct? [867]

Mr. Chapman: That's exactly it.

Mr. Dusenbery: Are there any funds that would answer that description, your Honor? I know of no such funds.

The Court: You just asserted a claim to \$6,000,000, in bonds and \$1,000,000, in cash.

Mr. Dusenbery: We do, your Honor. The bonds in this impound we claim to have a lien on them. We recognize the general property ownership in that collateral belonging to the Long Beach Association. We have them as pledgees as security for our notes. That is why I was trying to find out and clarify the point as to whether or not the Long Beach Association is now waiving its general property interest in that collateral security and permitting it to be paid over for attorney fees.



Mr. Chapman: This lien that they claim they have they got from Ammann. I don't think they got anything.

The Court: I understand counsel's position. His answer to your question of whether or not he consents to payment out of the assets in court of any money belonging to or that will ultimately be paid by Long Beach, is no.

Mr. Chapman: That is right.

Mr. Dusenbery: I was going to say yes a moment ago. The answer is now no.

The Court: He said no to me a while ago.

Mr. Dusenbery: To me it is a confusing sort of position, [868] your Honor, and I was just trying to clarify it so that we would know where we stand on it.

The Court: Very well.

Mr. Dusenbery: One other question I would like to ask, if I am permitted. Is counsel suggesting that any award that your Honor make on these fees should be made in such a manner, as I understood he suggested in his argument, that it would be impossible for the San Francisco Bank to appeal from that order or to obtain a stay or to put up a supersedeas bond or anything that would protect their right to have a review? Is that the suggestion that counsel made?

The Court: I do not think he needs to make his argument over again, counsel. I heard it. I understood it.

Mr. Dusenbery: Very well.

The Court: Anybody else?

Mr. Fitting: I am not going to take up the court's time, but I just want to say that I am not going to take the court's time to answer Mr. Chapman's thoughts and his insinuations, but just to say that we deny them, we stand on the record as it is, on the statutes and the regulations as they are, and have been during the course of this litigation.

The Court: Is everybody all through? Has anybody else anything to say? (No response.) [869]

### MEMORANDUM OPINION

The Court: As you have gone along here, I have tried to write down a little memorandum, and during the recess I have examined the matters that were pertinent and the cases which have been cited. I have had particular reference to the case of Winslow v. Ferguson, which I read this morning, Sprague v. Ticonic Bank, Eggert v. Pacific States, Fahey v. Mallonee, and another case or two that I will shortly advert to.

The first thing that strikes me about this application for attorney fees is this—and every time we have had a hearing I have been conscious of the fact—that there was extremely widespread notice of this application for fees, both so far as O'Melveny & Myers and Mr. FitzPatrick are concerned, as well as Mr. Gilbert. Notice was sent to every association and every person who could possibly be interested in the disposition of any money, either in court or in the hands of the San Francisco Bank or the Association, and the total and absolute ab-

sence of any objection or protest or appearance except on the part of the San Francisco Bank and the official defendants who have been here. None has come to the records of the court, none has come to the attention of the court, none has been filed with the clerk, nobody has appeared in this courtroom at these repeated hearings, at the beginning of them or since, even in spite of the widespread actual notice to the various parties and the published [870] notice which was required in the newspapers.

I say that because of the fact that again it appears that the people who are really interested, except for the Shareholders Committee and except as they represent the shareholders in the Los Angeles Bank, are not in this litigation. It is a quarrel apparently over power. I just want to make that as a preliminary remark, but it cannot be repeated too often in connection with this case.

The first question to be decided is whether or not the plaintiffs are entitled to any fees at all. The respondents have urged here that there must be success before there can be any allowance but, as I have indicated during the course of the argument and as I previously indicated in connection with the other applications for fees, that in my judgment is not a holding of the cases at all, and it is specifically indicated to the contrary in *Sprague v. Ticonic Bank*, and it seems to me that that is the inevitable conclusion of *Fahey v. Mallonee* arising in this very case.

I think that counsel is correct in saying that the measure of whether or not a person is entitled to

attorney fees on an interim allowance, or on a final allowance, is whether or not there was good faith and reasonable grounds. As always in a case of this magnitude, and as vigorously opposed as this is, it is difficult for counsel and for the court not to get onto a discussion of the merits. It has been necessary, [871] in connection with determining whether or not there was reasonable grounds or good faith, to at least give consideration to what the merits were in this case.

I do not think it is completely without significance that in *Fahey v. Mallonee* the court commented as follows, at page 257:

“One of the allegations of the complaint is that it was intended that this institution would be merged with other institutions to the injury of its shareholders. The allegation seems to be based on the fact that a different institution with which the management of the Long Beach institution was connected was merged by the authorities in a way that was highly objectionable to some of the shareholders and aroused concern of the public authorities. We find no explicit threat to merge the Long Beach institution and there is no such finding by the court below. The Government has assured us at the bar that there is no plan for such a merger in contemplation. Nevertheless such a merger was enjoined. In view of the absence of a finding of the threat or of evidence to sustain one, we accept the Government’s assurance that merger will not follow and, hence, we do not consider it necessary to discuss the legality of [872] hypothetical mergers.”



In this case there is no hypothetical merger and, borrowing the language from those who went to law school much later than I did, I should say that the rationale of what I have just read is to the effect that if there had been an explicit threat to take the Long Beach Association and merge it with another, or liquidate it and dissolve it completely, as was done in the Los Angeles Bank, that the Supreme Court would have reached a different conclusion.

In other words, it seems to me that that language supports the proposition that there certainly is reasonable ground, or was reasonable ground and still is reasonable ground, for the plaintiffs in the original case and for Mr. Gilbert and his client disassociating itself from its co-plaintiffs in the other case, to believe that they had a good lawsuit and which had merit and which should be tried on the merits. I do not think there is any question of the good faith, that is speaking as a personal thing, of counsel.

But another case strikes me as being significant in connection with determining whether or not there is reasonable grounds. We have to keep in mind the text of Section 26 that I just read which, in spite of its apparent broad grant, nevertheless did have some limitations, and it could be very easily urged and logically and in good faith urged, and is done so by the plaintiffs in the case who are now seeking allowance [873] to their counsel for fees, that there was not compliance with the law as it stood and that the Home Loan Bank Board and the defendants in that case, which is consolidated with



this case, violated the law, that they exceeded their lawful authority.

In *Land v. Dollar*, 330 U. S. 731, the defendants in that case in the court below were present and former members of the United States Maritime Commission. It involved a dispute over some stock which had been endorsed in blank to the Commission. The contention arose as to whether or not the plaintiffs in the court below were entitled to have their stock back and they instituted a suit. The District Court dismissed it on the ground that it was a suit against the United States, and the Circuit Court reversed it, and it went to the Supreme Court and the Supreme Court affirmed the Circuit Court in holding that the complaint stated a cause of action which, after all, is the test of whether or not there is reasonable grounds, and I have held in this case that the complaint stated a cause of action which would be sufficient to support my conclusion in that respect, but I have deemed it wise, in view of the vigor with which counsel have argued the matter and presented it, to add these few remarks.

At page 735 the court said:

“The allegations of the complaint, if proved, would establish that petitioners (that is to [874] say, the Maritime Commission, the officials of the United States) are unlawfully withholding respondents' property under the claim that it belongs to the United States.”

There is no distinction between the property belonging to the United States and a right to do something under the laws of the United States.

“That conclusion would follow if either of respondents’ contentions were established: (1) that the Commission had no authority to purchase the shares or acquire them outright; or (paraphrasing the language, if the Home Loan Bank Board had no authority to dissolve the bank and liquidate it and transfer its assets as alleged without consideration and without assumption of liability) or (2), that, even though such authority existed, the 1938 contract resulted not in an outright transfer but in a pledge of the shares.”

There is nothing in the second feature which is involved in this case.

“If respondents are right in these contentions (the respondents were the plaintiffs below), their claim rests on their right under general law to recover possession of specific property wrongfully withheld.” [875]

That is the contention of the plaintiffs here in this case, that they are entitled to recover possession of specific property wrongfully withheld and to settle their right and claim to it.

Further on page 736, in speaking of *United States v. Lee*, the court said:

“And it concluded that an agent or officer of the United States who acts beyond his authority is answerable for his actions. (Citing the now familiar cases of *Philadelphia Co. v. Stimson*, 223 U. S. 605, and *Sloan Shipyards Corp. v. United States Fleet Corp.*, 258 U. S. 549.)

“Where the right to possession or enjoyment of property under general law is in issue, and the de-

fendants claim as officers or agents of the sovereign, the rule of *United States v. Lee*, *supra*, had been repeatedly approved. (Citing a list of cases.)” Continuing:

“For if we view the case in its posture before the District Court, petitioners, being members of the Commission, were in position to restore possession of the shares which they unlawfully held.”

Then again on page 738:

“But public officials may become tortfeasors by [876] exceeding the limits of their authority. And where they unlawfully seize or hold a citizen’s realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dominant interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld.”

And there they held that the complaint stated a cause of action, or applying that reasoning here, if there had been an application for fees they certainly held that there were reasonable grounds and that the action was brought in good faith so as to entitle it to stand up as against a motion to dismiss. And cases which support the proposition that a party is entitled to litigate and is entitled to enforce by an action against the persons who are taking it away from him are, of course, *Williams v. Fanning*, *Ickes v. Fox*, and the other cases that are frequently cited.

I do not wish, and I have said heretofore that as far as I am concerned one of the great difficulties in

this case is to keep my eye on the ball and to avoid making any decision which will prejudice the merits of the case, but certainly it seems to me from what is before the court in the law, what is before the court in the pleadings and what is before the [877] court by way of files and records and of evidence, that the plaintiffs certainly have reasonable grounds for believing that they had a good cause of action and for maintaining their suit. Their rights to maintain the suit as to the establishment of the Bank have been vigorously contested every step of the way. And for the same reason it seems to me that the action must be said to have been brought in good faith.

I cannot find anything in any decision which says that counsel is not entitled to an interim allowance on attorney fees and, as I indicated before, the cases which I cited, *Sprague v. Ticonic Bank* and *Fahey v. Mallonee*, were authority for the allowance of fees on account.

I conclude that they are entitled, both O'Melveny & Myers and Mr. FitzPatrick, and Mr. Gilbert, to interim allowance of fees on account over the responses and objections urged against them.

The question next arises as to against whom they shall be assessed. I was impressed by Mr. Chapman's argument. I think that the fees that I am going to order allowed should not, under any circumstances, come out of the Long Beach Association except as the Long Beach Association may be a shareholder of the San Francisco Bank or the



Los Angeles Bank, whichever is ultimately decided to be the correct legal entity. [878]

I was first impressed by Mr. Works' argument that I could make an order, and I am satisfied that he is correct, as a matter of law. However, it seems to me that Mr. Chapman's suggestion is perhaps the most practical one, and for that reason I am going to order the fees that I allow paid out of the money on deposit with the clerk of the court, and further order that they shall not be paid from funds which belong to the—I do not know that I can say that—which belong to the Long Beach Association. Perhaps it would be better to say that they shall not be paid so that they shall be assessed ultimately against the Long Beach Association or its assets; that they shall be paid from the funds in court and if at any time the amount of money in court which belongs to the Long Beach Association is less than a sufficient amount to act as security for the notes that are here, the Long Beach Association shall not be ordered and directed to deposit that additional amount to make up that money.

In other words, the money shall be paid out of the funds in court which are ultimately held to belong either to the San Francisco Bank or to the Los Angeles Bank, whichever shall be the legal entity and the one who finally prevails, and not out of any funds which belong to or are ultimately found to belong to the Long Beach Association which are now on deposit in court.

I come now to the question of how much—the \$64 question. [879] And it is a \$64 question as far



as any judge is concerned. I doubt if any counsel here would know precisely what to do were he sitting in my position.

I have come to a conclusion concerning it which is a general one, which I will first announce, and that is that I shall not make a finding as to the total value of the services to the dates requested. That is to say, in so far as O'Melveny & Myers and Mr. FitzPatrick are concerned, to June 30, 1949; and as far as Mr. Gilbert is concerned, to and including February 27, 1950.

I think I might like to add generally here that if I did not come to the conclusion of the allowance of interim counsel fees a way would be discovered by those acting under the color of law to completely deny due process to anybody who might be doing business with them by simply seizing their property and say, "Well, you deposited your money in the Farmers & Merchants Bank and it is a member of the Federal Reserve System and the Federal Reserve Board has the power to do this and that, but you cannot even come in and litigate about it."

Moreover, as far as estoppel is concerned, I cannot see that there is any estoppel in fact nor can I see—or let me say this—that it is one of the issues in the case ultimately to be decided, as to whether or not there was any estoppel in law. [880]

We come back to the question which is so hard to decide. The uncontradicted testimony before the court is that the worth of the services of O'Melveny & Myers and Mr. FitzPatrick totaled the sum of

\$175,000. Now, against that I believe they were paid some money. How much was it?

Mr. Works: \$10,000, your Honor.

The Court: That was the total to the two?

Mr. Works: Yes.

The Court: Any allowance I am going to make I am going to make to the two of you.

Mr. Works: Yes; I understand.

The Court: As one allowance.

You were paid \$10,000?

Mr. FitzPatrick: Yes, your Honor, both of us. Not apiece but a total of \$10,000.

Mr. Works: \$5000 to each.

The Court: And, Mr. Gilbert, you have not been paid anything?

Mr. Gilbert: No, your Honor.

The Court: I will make an interim allowance for O'Melveny & Myers and Mr. FitzPatrick and W. I. Gilbert in the total sum of \$75,000. I will find as a fact that the value of their services exceeds that amount, but I will not make any finding as to the total value of their services.

\$7500 of the \$75,000 is to be paid to Mr. Gilbert and [881] the balance to be paid to O'Melveny & Myers and Mr. FitzPatrick as one allowance to be adjusted between themselves.

Anything else?

Mr. Works: Shall we prepare an order and submit it, your Honor?

The Court: Somebody will have to.

Mr. Dusenbery: May it please the court, I would like to state for the record that the San Francisco

Bank will desire to take an appeal from your Honor's order, and we are prepared to put up the usual supersedeas bond in order to stay the judgment.

The Court: Let us wait until the order is signed and entered before you file a notice of appeal.

Mr. Fitting: Will we be given the usual 5-day notice, and copies of the proposed order and findings will be served upon us?

The Court: No one has failed to do it yet in this case that I know of.

Mr. Fitting: I just wanted to make sure that this order came under that rule.

The Court: It does.

What is that rule number about final appeal?

Mr. Fitting: Rule 7 of the rules of this court.

The Court: No, FRCP.

Mr. Chapman: Rule 54(b), I believe. Let me check. [882]

The Court: Do you wish to be heard in connection with that?

Mr. Works: We request a final order, your Honor, if that is the question your Honor has in mind.

The Court: The rule says when more than one claim for relief is presented in an action. I do not know whether this comes within that rule or not, but I have deemed it wise to try and follow it.

Mr. Works: This is an ancillary petition in equity, I suppose.

The Court: It is an ancillary petition in equity for a judgment, but this is not a final judgment be-

cause I am only making an interim allowance on account of attorney fees and am not making any final judgment as to the total value of those fees.

Mr. Chapman: Your Honor, regardless of Rule 54(b) there are recent holdings of the United States Supreme Court—I don't happen to have the citations with me at the moment—but it came up in a New Jersey stockholders proceedings for indemnification of directors and it was held to be an appealable order.

Mr. Works: I should think it would be, your Honor.

The Court: You can make up your own mind whether or not you want to follow the provisions in connection with Rule 54(b). [883]

Mr. Works: We will give some study to that.

The Court: In making the allowance of \$75,000, on account I have, of course, taken into consideration the fact that Mr. FitzPatrick was paid \$5000 and O'Melveny & Myers were paid \$5000 as well.

Mr. Dusenbery: May it please the court, in view of the fact that the order, I assume following your Honor's opinion, will provide for payment out of funds already in the registry of the court under Rule 73(d) providing for stay, I think it would be necessary for the court to fix the amount of a stay bond. Apparently the fund will remain there during the appeal, and under the latter part of that provision the court fixes the amount necessary for the bond.

The Court: I am not going to do anything more about that order until I get the order before me and

it is signed. Then the time begins to run to the appeal. There is also a provision in the law that the judgment is automatically stayed 10 days, and if you want a further stay you can make up your mind then and come in and present an order and I will make a determination. But I am not going to make any determination on that now.

Mr. Bishop?

Mr. Bishop: Your Honor, my understanding is we are at liberty now to take all the records of the Bank back to the Bank for further disposal by the special master, except the [884] one exhibit which the court expressed it desired to retain in the records.

The Court: I do not desire it, but I do not see any need of the Bank for it. The Bank is not going to go broke without that hotel bill.

Mr. Bishop: That is right.

The Court: My understanding was that the records are down here actually in the physical custody of the Bank but technically in the custody of the special master.

Mr. Bishop: At this moment.

The Court: That they were produced to the special master.

Mr. Bishop: Yes.

The Court: My order will be that they will be returned to the special master.

Mr. Stacey, my clerk, said this morning that he did not know whether he would be able today to complete the marking of these exhibits or not. Have you done so?



The Clerk: They are all marked now, your Honor.

The Court: Very well. Then you can take them tonight.

Mr. Bishop: And I will call Mr. Chapman about the photostating arrangements if any questions arise, because he is the one who will have to be satisfied.

The Court: And they will not be released from the special master until photostats are furnished to the clerk. [885]

Mr. Bishop: I understand that.

The Court: In other words, they are still in the custody of the court and in the custody of the master and they cannot be released from him until the clerk gets his copies. After that it is up to the master and his proceedings.

I want to apologize to all you gentlemen for keeping you here on Good Friday and on this day before Easter, and I want to thank you for giving up your time to be here. It enables me to proceed with other matters which have been pressing and need to be litigated next week.

Mr. Westover: We appreciate the time you have given us on Saturday and Good Friday.

Mr. Gilbert: We also appreciate it.

Mr. Works: We also want to thank you.

Mr. Angell: Thank you, Judge Hall.

(Whereupon, at 4:50 o'clock p.m., court was adjourned.) [886]

The Court: All the objections of the Bank which deal with that seem to me can be overruled and have no basis and present nothing new, except No. 7, which puzzles me a little, which is on page 7 of their objections.

Mr. Angell: Does your Honor wish us to clarify that?

The Court: Maybe. Not yet. But I was thinking about that, and when I first read it I could not see that you had any basis at all for the objection, but upon reflection it occurred to me—and I may not be correct in this respect—that so far as the Long Beach Association is concerned, it is claiming that it owes neither the San Francisco Bank nor the Los Angeles Bank any money.

Mr. Chapman: That is right.

The Court: That it is entitled not only to all of the funds in court but also to a cancellation of the note.

Mr. Chapman: That is right.

The Court: And the return of all of the bonds which are deposited as security. And if that did ultimately occur, then [887] there would be no funds in court except the Long Beach Association's. Is that not your basis of objection?

Mr. Angell: That is one hundred per cent correct. All we have is the notes, which are claimed by the Association to be void because Amman had no authority to make them, and if that be true and the Association ultimately prevails on that, then the security securing those notes falls with the void notes.

The Court: The question was touched on a little bit in the arguments, or someplace along the line, to the effect that this would be a personal judgment against the San Francisco Bank.

Mr. Works: I raised that point, your Honor. It seems to me that you have jurisdiction in rem over every stick of property that they took from us, and you have jurisdiction in personam over them to require direct payment, if you care to do so.

As to this particular point, it seems to me, however, that it is one which the San Francisco Bank may not arise. Possibly Long Beach might if they cared to. That is up to them.

Mr. Angell: We are only trying to be helpful, Mr. Works.

Mr. Works: This is a sort of a hamstringing help.

Mr. Angell: I think it is the duty of counsel to point [888] out to the court any jurisdiction which may ultimately raise very difficult questions.

Mr. Works: We see your point all right.

The Court: This would not be a final judgment in the event that I reserved in this judgment the ultimate assessment of that money, would it?

Mr. Works: No.

Mr. Angell: It cuts just a little deeper than that, your Honor.

The Court: What everybody wants here is a final judgment, is that not right? I mean, you want a final judgment so that if the money is paid to you you will not have to five years from now to pay it back.

Mr. Works: That is right.

The Court: And you want a final judgment so you can appeal from it?

Mr. Angell: Yes.

Mr. Bishop: There is one other point. We feel that this case isn't poised at this time for a final judgment.

Mr. Chapman: If your Honor is interested I would like to give you the Association's position on that.

Mr. Works: I would like to have it.

The Court: Yes, I am interested.

Mr. Chapman: We feel that there is a marshaling of assets and accounting and many equitable proceedings, part of [889] which have already been done with final judgments and a vast part of which yet remains to be done. There can be no question of your jurisdiction over the San Francisco Bank, if there is a San Francisco Bank, or over the Los Angeles Bank, if there is such a bank, or over the Portland Bank, if there is one, because all of the assets, whichever of those one, two or three exist, were within the state of California and all of them are appearing here. We have served your process within the state of California. In some of the accounting, when you have decided and the appellate courts have ruled which banks exist, and whether Ammann had any authority, or what Long Beach is bound to do, there will have to be an accounting involving not \$75,000, but hundreds of times that. In that accounting you can then adjust whatever equities are necessary.

The Court: By surcharge?



Mr. Chapman: By surcharge, if necessary.

But at the moment you have somebody's assets to the tune of nearly \$14,000,000 here. Los Angeles says they were part of their seized assets. San Francisco says, no, they are ours. Long Beach says they are partly ours or all ours.

But you don't have to wait until you make the last item in that accounting in order to now make an allowance or an item. You can, however, say that this particular item that you are now allowing to the Los Angeles class plaintiffs— [890] and they are stockholders, 174 of those associations are stockholders in whichever bank or banks exist—and you can now say, I am going to allow you \$75,000 out of this money because some of it is going to belong to you as stockholders in whichever bank I find exists, and if it turns out that Long Beach is entitled to judgment against those banks, when I draw that final judgment I will adjust that item. You don't have to say that you are going to charge any of the \$75,000 against Long Beach in so far as Long Beach may be a stockholder.

The Court: That is what I intend to say.

Mr. Chapman: That is what you said on the bench.

The Court: In other words, I do not think that Long Beach should be charged with these fees because the benefit that is derived from them, if any ultimately is, will be derived not only on behalf of Long Beach, but on behalf of all of the shareholders of the Los Angeles Bank.

Mr. Chapman: I see no obstacle in your making



the order either in the form proposed by Mr. Works and Mr. Gilbert or the form proposed by us. We like our form because it seemed more emphatic in favor of the Long Beach Association never paying any part of it.

Mr. Works: Either form is all right as far as we are concerned.

The Court: It says: "It is a condition of this order [891] that no part of either of said sums shall be assessed ultimately against Long Beach Federal Association or its assets." What can be more definite than that?

Mr. Chapman: Our point is to make it a final judgment now rather than postpone it to ultimately. This would seem to me to postpone the question while our form decides now that it will never be against Long Beach and that whatever may later need to be done. In other words, you reserve power.

The Court: That no part shall be assessed ultimately.

Mr. Chapman: I appreciate that, but they go into the collateral question. My viewpoint of your Honor's order is that it reduces that note by \$75,000, whoever owns it and whoever owes anything on it. You now say that the amount of that note is down \$75,000. Therefore there should be no reference to any collateral.

The Court: Why cannot you add in here, "It is a condition of this order that no part of either of said sums now or shall at any time be assessed against Long Beach Federal Association"?

Mr. Works: Yes. You have a future provision in yours. You say "shall never be allocated," which carries it into the future also.

Mr. Chapman: Yes, that is right.

The Court: "\* \* \* no part of said sums now or shall at any time be assessed"—strike out "ultimately"—"against [892] Long Beach Federal Association or its assets."

Mr. Chapman: I don't like that collateral provision. That might assume we might have some liability. They say, we shall not be required to furnish additional collateral for \$75,000. That was our principal objection.

The Court: I am deciding that now. The only cash here, dollars, is Long Beach's, is that not so?

Mr. Westover: That is right.

Mr. Chapman: That you haven't decided yet.

The Court: I mean produced by Long Beach.

Mr. Chapman: They came in through Long Beach's efforts in respect to the disputed claims, but you haven't decided whether Long Beach owns a dime of the assets in court.

The Court: All of the cash money has come from Long Beach, is that not right?

Mr. Chapman: I don't think that is correct. I think intervening borrowers have put in plenty of money, such as people paying off their notes.

The Court: But they would go to Long Beach.

Mr. Chapman: That depends on the assignments on the back of those notes which were cancelled and transferred. Some of those notes were assigned by Ammann, purporting to act for Long Beach, about \$6,000,000 or \$7,000,000 worth, to the San Fran-

cisco Bank, if there was any such bank, and the San Francisco Bank used seized Los Angeles assets [893] to pay Ammann as commission for those assignments. That is why I think any reference to additional collateral ever being required is improper. If the amount of the note is written down that much it could never require collateral to the amount that was cancelled thereby. If, after reading theirs, you had read ours again you would see our point more clearly than I have made it by argument here.

The Court: You say it is not assessed against any specific party or parties?

Mr. Chapman: Except that.

The Court: I know, except that. Why put that in? It is a condition that no part of either of said sums now or at any time be assessed against.

Mr. Chapman: Do you want to now determine who you are assessing it against?

The Court: No. All I want to determine is that Long Beach should not pay it.

Mr. Chapman: That is what we were trying to get at.

Mr. Angell: Who then, if Long Beach doesn't pay it, who is it a judgment against?

The Court: It is not a judgment against anybody, it is an order to the clerk to pay some money out of the registry of the court. It is a judgment against the funds that are deposit in court.

Mr. Angell: That is equivalent to a judgment against [894] the person who owns them.

The Court: Who owns it?

Mr. Chapman: We don't own that until the lawsuit is over.

Mr. Angell: I think who owns them is as clear as anything could be, that is, that Long Beach owns them. I never, never knew of any person who had anything put up for security that didn't own it. All the other fellow had was a security in it.

Mr. Chapman: If you are willing to stipulate that we don't owe you any money——

The Court: He means that you owe it but the property is yours.

Mr. Angell: If I give you my automobile as security for a note, I still own the automobile. All you have is a lien.

Mr. Works: I don't care which one of these you use. It makes no difference to me. The intention of everyone is clear, that Long Beach is to be saved harmless. It is just a question of how to say it.

Mr. Chapman: Ours tries to follow the previous orders about reservation of power, particularly the one that we worked four or five drawings to put in on May 10, 1949.

The Court: Here are some notions—you say you have no objection—take their suggestion down to line 15. It says: “It is ordered, adjudged and decreed”—say, “It is [895] hereby adjudged and ordered that neither said amounts nor any part thereof herein allowed and ordered paid”—strike out “from said funds”—“are now or shall ever be allocated against or imposed upon any part”—strike “of the same against or upon”—“upon any part of the funds or assets ultimately found to be owned by or belonging to Long Beach Federal Savings & Loan Association,” etc., to the end of the paragraph. And then adding: “Except as such association shall bear



as a shareholder only of either the San Francisco Bank or the Los Angeles Bank."

Mr. Chapman: Los Angeles or Portland. We don't know which banks are coming out of this.

The Court: There are only two here now, are there not?

Mr. Chapman: I don't know whether San Francisco is Portland or Portland is San Francisco.

Mr. Angell: All it is is a change of corporate name.

Mr. Works: Say "any of the home loan banks parties hereto," if you want to.

Mr. Chapman: That will be fine.

The Court: "as a shareholder only of any of the home loan banks parties hereto"——

Mr. Works: "any home loan bank party hereto." Either you are right or we are right.

The Court: "shareholder only of a home loan bank"—leave out "party hereto." [896]

Mr. Chapman: Yes.

Mr. Works: All right.

The Court: Then adding: "The intention being that the services for which fees are herein allowed are primarily for the benefit of said Los Angeles Bank and its association shareholders as distinguished from the Long Beach Association and other parties as separate entities or parties. To that end, it is further ordered that Long Beach Association shall not at any time be required to deposit any additional money or property in court upon or because of the payment of all or any portions of the sums required herein to be paid."



Mr. Chapman: That suits me.

Mr. Works: That is fine.

The Court: I will have to unscramble some of the language here.

Mr. Chapman: Maybe you would rather dictate it.

The Court: Do you want to have the girl come in and I will dictate it?

Mr. Angell: May the record show that our presence here at the drawing of this order does not waive any of our objections to the form of the order either as presented or as finally drawn. That is just made for record purposes, your Honor.

The Court: Surely.

And the same is true of the Government. [897]

Mr. Fitting: Thank you. [898]

\* \* \*

[Endorsed]: No. 12591. United States Court of Appeals for the Ninth Circuit. John H. Fahey, et al., Appellants, vs. O'Melveny & Myers, W. I. Gilbert, Jr., and Richard FitzPatrick, Appellees, and Federal Home Loan Bank of San Francisco, Appellant, vs. O'Melveny & Myers, W. I. Gilbert, Jr., and Richard FitzPatrick, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed August 14, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

## EXHIBIT "A"

PARTIAL TABLE OF DOCUMENTS PRINTED  
IN RECORD ON APPEAL IN FAHEY, ET  
AL., V. MALLONEE, ET AL., 12511, PER-  
TINENT TO APPEAL 12591

Motion of Federal Home Loan Bank of Los  
Angeles for Order Directing Payment of  
Attorneys' Fees on Account Vol. XII, page 5698

Affidavit of Richard FitzPatrick in sup-  
port thereof.....Vol. XII, page 5702

Notice of Motion for Leave to Serve Supple-  
ment to Motion for Order Directing Pay-  
ment of Attorneys' Fees, dated July 7,  
1949 .....Vol. XV, page 6942

Affidavit of Paul Fussell and John Whyte  
.....Vol. XV, page 6944

Affidavit of Richard FitzPatrick Vol. XV,  
..... page 6954

Affidavit of J. Francis Moore, dated Septem-  
ber 21, 1949.....Vol. XV, page 7228

Affidavit of Ernest Reardon dated September  
20, 1949, and Exhibits.....Vol. XV, page 7241

Motion and Petition of First Federal Savings  
and Loan Association of Wilmington for  
Allowance on Account of Attorneys' fees,  
etc. Dated February 10, 1950..Vol. XIX,  
..... page 8909

Affidavit of W. I. Gilbert, Jr., filed February 20, 1950.....	Vol. XIX, page 9022
Answer and Opposition of San Francisco Bank to Motion of First Federal Savings and Loan Association of Wilmington, dated February 23, 1950.....	Vol. XX, page 9192
Affidavit of Frank C. Noon, and Exhibits .....	Vol. XX, page 9201
Memorandum of Home Loan Bank Board, et al., in Opposition to Motions by Plaintiffs for Order Directing Payment of Attorneys' Fees on Account and Costs. Filed February 23, 1950.....	Vol. XX, page 9058
Response of Plaintiffs Mallonee, et al., to All Applications re Attorneys' Fees .....	Vol. XX, page 9080
Affidavit of Irving Bogardus in Opposition to Motion of Wilmington.....	Vol. XX, page 9206
Affidavit of Ammann in Opposition to Motion of Wilmington for Allowance of Fees, filed March 14, 1950.....	Vol. XX, page 9312
Affidavit of Tracy Skelton filed March 14, 1950.....	Vol. XX, page 9323
Affidavit of J. Howard Edgerton filed March 14, 1950.....	Vol. XX, page 9340
Motion for Order Requiring Deposit in Court and to Redeliver Excess Collateral, filed February 9, 1948.....	Vol. VIII, page 3562

Return of San Francisco Bank in Resistance  
to Motion for Deposit, etc. Vol VIII, page 3690  
Order dated March 26, 1948, Requiring  
Deposit of Notes, Deeds of Trust, etc.  
.....Vol. XVIII, page 8526  
Motion of San Francisco Bank to Vacate and  
Set Aside Order of Impound, filed July 30,  
1948.....Vol. XI, page 4953

Respectfully Submitted,

ERNEST A. TOLIN,

U. S. Attorney, Southern  
District of California.

By /s/ ARLENE MARTIN,

Assistant U. S. Attorney.

/s/ WILLIAM F. McKENNA,

Assistant General Counsel,  
Home Loan Bank Board.

Attorneys for Appellants, Home Loan Bank Board,  
William K. Divers, J. Alston Adams, O. K.  
LaRoque, the Federal Savings and Loan In-  
surance Corporation, John H. Fahey, A. V.  
Ammann and George K. Bramley.

VERNE DUSENBERY,

PHILIP H. ANGELL,

BISHOP & HOFFMAN,

By /s/ PHILIP H. ANGELL,

Attorneys for Appellant, Federal Home Loan Bank  
of San Francisco.

[Endorsed]: Filed December 1, 1950.

EXHIBIT "A"

PARTIAL TABLE OF DOCUMENTS PRINTED  
IN RECORD ON APPEAL IN FAHEY, ET  
AL., V. MALLONEE, ET AL., 12511, PER-  
TINENT TO APPEAL 12591

Complaint to Enforce Legal and Equitable  
Claims to, to Obtain Possession of and to  
Remove Liens from and Clouds Upon Title  
to, Property and for Other and General Re-  
lief, and Exhibits.....Vol. XX, page 9466

Exhibit A—Federal Home Loan Bank of  
Los Angeles Trial Balance, March 29,  
1946.....Vol. XX, page 9497

Exhibit B—Federal Home Loan Bank of  
Los Angeles Administration Bulletin  
54.....Vol. XX, page 9498

Affidavit of Berry, C. E., for Order Directing  
Service of Process Outside the District or  
for Publication Thereof....Vol. XX, page 9503

Order Directing Service of Process Outside  
the District, or for Publication Thereof  
.....Vol. XX, page 9502

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Portland and Return of Service  
.....Vol. XX, page 9506

Summons to Fahey, John H., etc., and Return  
of Service.....Vol. XX, pages 9508, 9511



Cross-Claim of Federal Home Loan Bank of Los Angeles to Enforce Legal and Equitable Claims to, to Obtain Possession of, and to Remove Liens From and Clouds Upon Title to, Property and for other and General Relief.....	Vol. II, page	564
Order Directing Service of Process of Cross-Claim of Federal Home Loan Bank of Los Angeles Outside of the District or for Publication Thereof.....	Vol. II, page	595
Summons on Cross-Claim of Federal Home Loan Bank of Los Angeles to the Federal Home Loan Bank of Portland With Return of Service.....	Vol. II, page	606
Summons on Cross-Claim of Federal Home Loan Bank of Los Angeles to John H. Fahey, etc., with Returns of Service .....	Vol. II, pages	801, 802
Answer of Home Loan Bank Board, et al., .....	Vol. XX, page	9540
Answer of Federal Home Loan Bank of San Francisco to Cross-Claim of Federal Home Loan Bank of Los Angeles, and Exhibits .....	Vol. IX, page	4103
Answer of Home Loan Bank Board, et al., to Third Party Cross-Claim of Federal Home Loan Bank of Los Angeles..	Vol. XI, page	5067
Minute Order Entered November 3, 1947 .....	Vol. XX, page	9531

Return of Federal Home Loan Bank of Los Angeles to Order to Show Cause .....	Vol. VIII, page 3642
Order for Substitution of Parties-Defendant Under Rule 25(d) F.R.C.P..	Vol. XX, page 9532
Order for Substitution of Parties Cross-Defendant Under Rule 25(d) F.R.C.P. Filed July 6, 1948.....	Vol. X, page 4547
Affidavit of Publication of Order Setting for Hearing Motion of Plaintiffs for Order Directing Payment of Attorneys' Fees on Account, etc.....	Vol. XIX, pages 8862, 8877, 8957
Order Setting for Hearing Motions of Plaintiffs for Order Directing Payment of Attorneys' Fees, etc.....	Vol. XX, page 9547
Exhibit A—Names and Addresses of Members and Stockholders of Banks .....	Vol. XX, page 9551
Notice of Continuance of Hearing on Motion and Petition of Plaintiffs for an Order Directing Payment of Attorneys' Fees, etc. .....	Vol. XX, page 9356
Affidavit of Service.....	Vol. XX, page 9357
Notice of Continuance of Hearing on Application for Fees.....	Vol. XX, page 9413
Affidavit of Service.....	Vol. XX, page 9414
Minute Order Entries:	
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March 22, 1950.....	Vol. XX, page 9404

Reporter's Transcript of Conferences

.....Vol. XXIII, pages 10709, 10738, 10743

Reporter's Transcript of Proceedings

.....Vol. XXIII, page 10403

.....Vol. XXIV, page 11453

Respectfully submitted,

RICHARD FITZPATRICK,

O'MELVENY & MYERS,

By .....,

Pierce Works.

Attorneys for Appellees Federal Home Loan Bank  
of Los Angeles, et al.

[Endorsed]: Filed January 18, 1951.

In the United States Court of Appeals  
For the Ninth Circuit

No. 12591

JOHN H. FAHEY, et al.,

Appellants,

vs.

O'MELVENY & MYERS, et al.,

Appellees.

FEDERAL HOME LOAN BANK OF SAN  
FRANCISCO,

Appellants,

vs.

O'MELVENY & MYERS, et al.,

Appellees.

STATEMENT OF FEDERAL HOME LOAN  
BANK OF SAN FRANCISCO OF POINTS  
TO BE RELIED UPON ON THIS APPEAL

In accordance with Rule 19(6) of the Rules of this Court, appellant Federal Home Loan Bank of San Francisco makes this statement of points to be relied upon on this appeal.

I. The District Court lacks jurisdiction of the consolidated actions in which the order appealed from was entered, and therefore was without power to enter said order awarding attorneys' fees and directing the payment thereof, and its findings of fact and conclusions of law to the contrary are erroneous.

II. The District Court lacked jurisdiction in Federal Home Loan Bank of Los Angeles, et al., v. Federal Home Loan Bank of San Francisco (No. 5678-W.M. below), one of said consolidated actions, in that.

A. The members of the Home Loan Bank Board are indispensable parties to said action.

B. The said Board members have not been and cannot be duly sued or served in said action.

1. The said Board members are non-residents of the State of California and have never been served therein.

2. The said Board members may not be sued or served as non-resident defendants in said action under 28 USC 1655 since said action is not one to enforce a lien or remove a cloud on property located within the State of California, and the relief prayed for cannot be granted save by a decree in personam against the Board members, which is unauthorized by 28 USC 1655.

3. The said Board members have never made a general appearance in said action or otherwise submitted to the jurisdiction of the District Court over their persons. The District Court's findings and conclusions of law to the contrary are erroneous.

C. Neither the Federal Home Loan Bank of Los Angeles nor its shareholders have any justiciable interest sufficient to maintain said action.

D. The said action is an unconsented suit against the United States.



E. The Administrative Procedure Act does not confer jurisdiction upon the District Court and the court's findings and conclusions of law to the contrary are erroneous.

III. The District Court lacked jurisdiction in *Mallonee, et al., v. Fahel, et al.* (No. 5421-PH below), the second of said consolidated actions, in that,

A. The claims in said second action are inseparable from those alleged in the other consolidated action.

B. The second action involves a collateral attack on the administrative orders complained of in said action.

C. The matters involved in said administrative orders are within the exclusive, primary jurisdiction of the Home Loan Bank Board, and the parties allegedly aggrieved by said orders have failed to exhaust their administrative remedies.

D. The District Court lacked jurisdiction over the persons of the present and former members of the Home Loan Bank Board in said second action, and said Board members are indispensable parties to said action.

1. None of said present or former members are residents of the State of California, and none have been served therein.

2. The said present and former members cannot be sued or served in said second action as non-resi-

dent defendants under Title 28 USC 1655. The District Court's findings and conclusions of law to the contrary are erroneous.

(a) The said second action was never one to enforce or remove a lien or cloud on property located within the State of California.

(b) Upon the termination of the appointment of defendant Ammann as Conservator of the Long Beach Federal Savings and Loan Association, the said action had for its sole object an in personam judgment for money damages which is unauthorized by 28 USC 1655.

3. The said present and former members cannot be sued or served under 28 USC 1335 or 2361, either in said second action or in the so-called cross-claims or interpleaders or bills in the nature of interpleader filed in said action. The District Court's findings and conclusions of law to the contrary are erroneous.

(a) The said actions, cross-claims, interpleaders, or bills in the nature of interpleader, are none of them civil actions of or in the nature of interpleader.

(b) None of said present or former members are "claimants" to any of the money or property in controversy, within the meaning of 28 USC 1335 and 2361.

(c) The claims, if any, of said present and former members, are asserted in their official capacity only, and are thus the claims of the United States which has not consented to be sued thereon.

4. None of said present or former members has ever made a general appearance or otherwise submitted to the jurisdiction of the District Court over his person in said second action or other proceeding filed therein. The District Court's findings and conclusions of law to the contrary are erroneous.

5. The claims for damages now contained in said second action are all predicated upon the alleged invalidity of the administrative order appointing a conservator, and the present and former members of the Home Loan Bank Board are necessary and indispensable parties to the determination of such issue.

E. The said second action is an unconsented suit against the United States.

F. The District Court lacked jurisdiction over the Federal Savings and Loan Insurance Corporation.

1. Said corporation has never been served in the State of California.

2. Said corporation cannot be sued or served in the State of California, since it is not a California corporation, and neither does business in the State of California nor maintains any agent on whom service can be made in said state.

3. Said corporation cannot be sued or served as a non-resident defendant under 28 USC 1655 or 1335 and 2361 for the reasons specified in Points III-D-2 and 3 above.

G. The Administrative Procedure Act does not confer jurisdiction upon the District Court and the court's findings and conclusions of law to the contrary are erroneous.

IV. Assuming, contrary to fact and law, that the District Court had jurisdiction of one or more of the consolidated actions for some purpose, the District Court erred in awarding attorneys' fees to appellees.

A. The District Court is without power to award fees to counsel for plaintiffs against defendants in Action No. 5678.

1. Said action is one in personam for recovery of property alleged to have belonged to a Federal corporation and instrumentality which has been dissolved.

2. In such action the District Court is without power to award, in the absence of authorization by statute or contract, attorneys' fees in favor of one litigant against another.

3. There is no general fund subject to the jurisdiction of the District Court which has been benefited by the services of appellees and against which an award of attorneys' fees can be made under the District Court's general equity power.

B. There are no funds or assets of Los Angeles Bank (one of the plaintiffs in said Action No. 5678) on deposit or subject to the jurisdiction of the District Court as against which an allowance of fees can be made on the theory of receivership or

derivative class action, and there is no sufficient justification for any such award under the circumstances of this case.

1. Action No. 5678 is not a receivership case in which an allowance for fees and expenses incurred in resisting an application for receivership may be allowed as against a receiver.

2. The legal existence of the purported Los Angeles Bank and its right to maintain the action is one of the principal issues of said action, which is untried and undetermined.

3. The right of shareholders to reimbursement for fees and expenses incurred in a derivative class action exists only as against the funds of the corporation in whose behalf the action is brought.

4. The asserted claim of the Los Angeles Bank to certain property of the San Francisco Bank on deposit in court or otherwise is one of the principal issues of said action and is untried and undetermined.

5. The District Court's findings and conclusions of law to the effect that the services of appellees were necessarily rendered in good faith and benefited plaintiffs are unsupported by the evidence and are contrary to law; and even if such findings were properly established, they would not constitute legal justification for the award of attorneys' fees from which this appeal is taken.

C. The District Court's award of attorneys' fees to appellees at this time is premature.



1. Prior to judgment following a trial on the merits, there is no general or other fund subject to the control of the District Court against which any such award could properly be made for the reasons set forth in A-3 and B-4 above.

2. The right to reimbursement for fees and expenses incurred in a derivative class action arises only when the action results in a pecuniary benefit to the corporation, which can be determined only upon a final termination of the litigation, and an application for allowance of fees prior thereto is premature.

V. Assuming, contrary to fact and law, that the District Court had jurisdiction of one or more of the consolidated actions for some purpose and could award fees to appellees at this time, the District Court erred in ordering payment of such fees out of moneys on deposit in the registry of the court.

A. Moneys on deposit in the registry of the court have accrued from various interventions, interpleaders or proceedings in the nature of interpleader, all of which are ancillary to Action No. 5421, while attorneys' fees allowed by the District Court were awarded to attorneys for plaintiffs in case No. 5678 and did not accrue in connection with any of said ancillary proceedings.

B. There are no general funds in the registry of the court available for the payment of such allowance.

C. The failure of the District Court's order for

allowance to designate particularly which of several specific funds are to be used for the payment of said fees and the conditions attached to such order render it incapable of being carried out, except as against collateral securing obligations owned by this appellant, payment from which would constitute a premature, prejudicial and unlawful deprivation of property of this appellant without due process of law to its irreparable injury.

Dated: August 21, 1950.

Respectfully submitted,

VERNE DUSENBERY,  
PHILIP H. ANGELL,  
IRVING G. BISHOP,  
SYLVESTER HOFFMAN,

By /s/ PHILIP H. ANGELL,  
Attorneys for Appellant Federal Home Loan Bank  
of San Francisco.

[Endorsed]: Filed August 21, 1950.

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[Title of Court of Appeals and Cause.]

JOINDER OF APPELLANTS HOME LOAN  
BANK BOARD, ET AL., IN STATEMENT  
OF FEDERAL HOME LOAN BANK OF  
SAN FRANCISCO OF POINTS TO BE RE-  
LIED UPON ON THIS APPEAL

The appellants Home Loan Bank Board, an agency of the executive branch of the Government of the United States, William K. Divers, Chairman,

and J. Alston Adams and O. K. LaRoque, Members of the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, a corporate instrumentality of the United States, wholly owned by the United States; John H. Fahey, A. V. Ammann, and George K. Bramley hereby join in the "Statement of Federal Home Loan Bank of San Francisco of Points to Be Relied Upon on This Appeal," filed in this Court on August 21, 1950, and adopt such statement as the Statement of Points of these appellants to be Relied Upon on This Appeal.

Dated: September 5, 1950.

ERNEST A. TOLIN,

United States Attorney.

CLYDE C. DOWNING, and

PAUL FITTING,

Assistant United States Attorneys.

By /s/ PAUL FITTING,

Attorneys for Appellants. Home Loan Bank Board, Wm. K. Divers, J. Alston Adams, O. K. LaRoque, Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann and George K. Bramley.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 8, 1950.

[Title of Court of Appeals and Cause.]

ORDER PERMITTING REFERENCE TO  
PRINTED RECORD ON APPEAL IN AP-  
PEAL ENTITLED "FAHEY, ET AL., VS.  
MALLONEE, ET AL." No. 12511 IN THE  
FILES OF THE ABOVE-ENTITLED  
COURT, EXTENDING TIME OF ALL PAR-  
TIES FOR DESIGNATION OF PORTIONS  
OF RECORD FOR PRINTING ON AP-  
PEAL, AND EXTENDING TIME OF ALL  
PARTIES FOR FILING BRIEFS

Good Cause Appearing Therefor and pursuant to  
the written stipulation of appellants and appellees  
in the above-entitled appeal, it is hereby ordered  
that:

Reference may be made in the above-entitled ap-  
peal to the printed record on appeal in Fahey, et  
al., vs. Mallonee, et al., No. 12511 in the files of the  
above-entitled Court and that it will not be neces-  
sary for any of the parties to this appeal to reprint  
in the above-entitled appeal any portions of the rec-  
ord printed in said appeal No. 12511;

Appellants shall have fifteen (15) days from and  
after the mailing by the clerk of the above-entitled  
Court of the printed record in said appeal No.  
12511 within which to designate portions of the rec-  
ord to be printed in the above-entitled appeal, and  
appellees shall have fifteen (15) days after receipt  
of such designation by appellants within which to  
counter-designate any additional portions of the  
record to be printed;

The time for filing appellants' opening briefs in the above-entitled appeal shall be calculated from the date upon which copies of the printed record in the above-entitled appeal are mailed by the clerk of said Court of Appeals.

Dated: September 18, 1950.

/s/ CLIFTON MATHEWS,

/s/ HOMER T. BONE,

/s/ WALTER L. POPE,

Judges of the United States Court of Appeals for  
the Ninth Circuit.

[Endorsed]: Filed September 19, 1950.